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The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The Rule Adoption Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the Attorney General's opinions and state declaratory rulings. Special notices and tables are found at the end of each Register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 438-6122.

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BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 20.7.1101 concerning conditions on probation or parole	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 23, 2024, at 10:00 a.m., the Department of Corrections will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rule. Interested parties may access the remote conferencing platform in the following ways:

(a) Join via Microsoft Teams (https://www.microsoft.com/en-us/microsoft-teams/join-a-meeting):

Meeting ID: 214 384 864 359
Passcode: HDCCoJ

(b) Telephone: (406) 318-5487
Passcode: 941 470 904#

(c) Join on a video conferencing device:

Tenant key: 291818717@t.plcm.vc
Video ID: 112 850 167 1

2. The Department of Corrections will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Corrections no later than August 7, 2024, to advise us of the nature of the accommodation that you need. Please contact Pamela Lammey, Department of Corrections, 5 South Last Chance Gulch, Helena, Montana, 59601; telephone (406) 444-9819; or e-mail Pamela.Lammey@mt.gov.

3. The rule proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

20.7.1101 CONDITIONS ON PROBATION OR PAROLE (1) The offender is under the supervision of the department, subject to all rules and regulations of adult probation and parole, including any sanctions.

(2) The offender must obtain prior approval from his/her supervising officer before taking up residence in any location. The offender shall not change his/her place of residence without first obtaining written permission from his/her supervising officer or the officer's designee. The offender must make the residence open and available to an officer for a home visit or for a search upon reasonable suspicion.

The offender will not own dangerous or vicious animals and will not use any device that would hinder an officer from visiting or searching the residence.

~~(2)~~ (3) The offender must obtain permission from his/her supervising officer or the officer's designee before leaving his/her assigned district. For any in-state travel, the offender must confer with their supervising officer about the travel permit policy.

~~(3) The offender must seek and maintain employment or maintain a program approved by the Board of Pardons and Parole or the supervising officer. Unless otherwise directed by his/her supervising officer, the offender must inform his/her employer and any other person or entity, as determined by the supervising officer, of his/her status on probation, parole, or other community supervision.~~

(4) ~~Unless otherwise directed, the offender must submit written monthly reports to his/her supervising officer on forms provided by the probation and parole bureau.~~ The offender must personally contact his/her supervising officer or designee when directed by the officer.

(5) The offender is prohibited from using, owning, possessing, transferring, or controlling any firearm, ammunition (including black powder), weapon, or chemical agent such as oleoresin capsicum or pepper spray.

~~(6) The offender must obtain permission from his/her supervising officer before engaging in a business, purchasing real property, purchasing an automobile, or incurring a debt.~~

~~(7)~~ (6) Upon reasonable suspicion that the offender has violated the conditions of supervision, a probation and parole officer may search the person, vehicle, and residence of the offender, and the offender must submit to such search. A probation and parole officer may authorize a law enforcement agency to conduct a search, provided the probation and parole officer determines reasonable suspicion exists that the offender has violated the conditions of supervision.

~~(8) The offender must comply with all municipal, county, state, and federal laws and ordinances and shall conduct himself/herself as a good citizen. The offender is required, within 72 hours, to report any arrest or contact with law enforcement to his/her supervising officer or designee. The offender must be cooperative and truthful in all communications and dealings with any probation and parole officer and with any law enforcement agency.~~

~~(9) The offender is prohibited from using or possessing alcoholic beverages and illegal drugs. The offender is required to submit to bodily fluid testing for drugs or alcohol on a random or routine basis and without reasonable suspicion.~~

~~(10) The offender is prohibited from gambling.~~

~~(11) The offender shall pay all fines, fees, and restitution ordered by the sentencing court.~~

(7) The offender must notify his/her supervising officer within 72 hours whenever the offender has a change in circumstances of employment or alternative approved programming, or any contact with law enforcement.

~~(12)~~ (8) The Montana Board of Pardons and Parole and the sentencing court have the authority to order the offender to abide by additional conditions and such conditions must be contained in the judgment or parole decision.

AUTH: 2-4-201, 46-23-1011, 53-1-203, MCA

IMP: 46-23-1011, 46-23-1021, MCA

REASON: This rule has not been updated since 2008, and the department identified it as requiring revision. The department's collaborative review process determined that a number of these standard conditions were either outdated or were not necessary as standard conditions. Nothing in this proposed rule or the proposed eliminated provisions precludes the department from recommending case-specific conditions not contained in this rule. In addition, nothing in this proposed rule or proposed eliminated provisions impedes a court or the Board of Pardons and Parole from imposing conditions of supervision.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Pamela Lammey, Department of Corrections, 5 South Last Chance Gulch, Helena, Montana, 59601; telephone (406) 444-3930; or e-mail Pamela.Lammey@mt.gov, and must be received no later than 5:00 p.m., August 26, 2024.

5. The legal unit of the department has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Written requests may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

7. An electronic copy of this proposal notice is available through the Secretary of State's website at rules.mt.gov.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Andres Haladay
Andres Haladay
Rule Reviewer

/s/ Brian Gootkin
Brian Gootkin
Director
Department of Corrections

Certified to the Secretary of State July 16, 2024.

BEFORE THE BOARD OF OUTFITTERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.171.401, 24.171.405, 24.171.407, 24.171.408, 24.171.410, 24.171.412, 24.171.413, 24.171.501, 24.171.502, 24.171.507, 24.171.508, 24.171.512, 24.171.520, 24.171.601, 24.171.701, and 24.171.2301, the adoption of NEW RULES I and II, and the repeal of ARM 24.171.104, 24.171.404, 24.171.602, 24.171.2101, 24.171.2104, and 24.171.2305 pertaining to the board of outfitters	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On August 20, 2024, at 9:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, https://mt-gov.zoom.us/j/83163246715
Meeting ID: 831 6324 6715, Passcode: 826442
-OR-

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 831 6324 6715, Passcode: 826442

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on August 13, 2024, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

24.171.401 FEES (1) Fees for outfitters, operations plan, guide, or use of outfitter assistants shall be as set forth below. The following fees are nonrefundable.

(a) through (g) remain the same.

~~(h) Fee for each set of two replacement watercraft identification tags 5~~

(i) remains the same but is renumbered (h).

AUTH: 37-1-131, 37-1-134, 37-47-201, 37-47-306, MCA
IMP: 37-1-134, 37-1-141, 37-47-304, 37-47-306, 37-47-307, 37-47-308, 37-47-310, MCA

REASON: The board is amending this rule to remove the fee for replacement watercraft tags after amending the watercraft identification rule to require self-generated and maintained tags. The board has averaged 705 yearly requests for replacement tags over the past five years. The board anticipates that by repealing the corresponding replacement tag fee, the board will receive $3000 less in yearly revenue, but reduction of staff time in producing the replacement tags will offset the lost revenue.

24.171.405 BOOKING AGENTS AND ADVERTISING (1) remains the same.

(2) Outfitters may enter into an arrangement with a guide or other person whereby the outfitter's services are advertised by or at the direction of that person or whereby clients are referred to the outfitter, but the outfitter is accountable to the board for the appearance and propriety of all such advertising and for all interactions between the other person and the clients and potential clients. All advertising regarding outfitting services must comply with the rules applicable to outfitters.

(3) Guides are prohibited from advertising ~~to outfitters~~ directly to the general public using any media ~~or~~, including but not limited to print, digital or social methods ~~that the general public may also view shall include a clear and conspicuous disclaimer that advises the general public that the advertisement is for outfitters only, not the general public~~.

AUTH: 37-1-131, 37-47-201, MCA
IMP: 37-47-201, 37-47-301, MCA

REASON: The board is amending this rule to clarify that all forms of advertising media are covered by this rule.

24.171.407 INSPECTION (1) Inspections of outfitter and guide operations may be made by a representative of the board at all reasonable times. ~~The purpose of the inspection is to periodically examine the premises, equipment, and/or procedures of a licensed individual to determine whether the individual's practice is being conducted in a manner consistent with the laws and rules of the board, and the public health, safety and welfare.~~

(2) Licensees may be subject to disciplinary action as a result of inspections.

AUTH: 37-47-201, MCA
IMP: 37-47-301, 37-47-302, MCA

REASON: The board is amending this rule to clarify that licensees may be subject to a disciplinary action for failing to comply with or otherwise failing a department inspection.

24.171.408 OUTFITTER RECORDS (1) Outfitters shall maintain current and accurate records and make the records available:

(a) ~~to enforcement or investigative personnel authorized or appointed by the board~~ upon written request of the board or department; or

~~(b) upon subpoena or order of a court;~~

~~(c) upon written request of the board; or~~

~~(d)~~ (b) upon written request of a state or federal agency for law enforcement purposes provided the outfitter voluntarily consents to the disclosure or the disclosure is compelled by legal process such as a warrant, subpoena, or other court order.

(2) Outfitter records shall contain: ~~information as required by the board. The information required, in addition to information for operations plans under ARM 24.171.520 and employment records relative to outfitter assistants under ARM 24.171.410, shall include:~~

(a) remains the same.

(b) each ~~client's~~ client name and/or unique identifier assigned to the client by the Department of Fish, Wildlife and Parks;

(c) remains the same.

(d) category of NCHU applicable for each client; ~~and~~

(e) the name of the outfitter assistant or the name and license number of the guide who accompanied the client~~.~~;

(f) operations plans as required by ARM 24.171.520; and

(g) employment records for outfitter assistants as required by ARM 24.171.410.

(3) ~~In general, outfitter~~ Outfitter records~~, including, but not limited to the operations plans,~~ shall be maintained as confidential information and shall not be released to any person or organization without written permission of the outfitter, ~~subpoena or order of a court, or written request of a state or federal agency for law enforcement purposes~~ or as provided in (1). ~~A specific outfitter's number of NCHU is confidential information, but whether~~ Whether an outfitter has NCHU of a particular category is public information. ~~All inquiries for outfitter records shall be reviewed and considered in relation to this rule and the competing interests between the public's right to know and the rights of privacy involved in the particular records requested.~~

AUTH: 37-1-131, 37-47-201, MCA
IMP: 37-1-131, 37-47-201, 37-47-301, 37-47-304, MCA

REASON: The board is amending this rule to remove statutory duplication and unnecessary language. This rule is also being amended to correct an error that allowed outfitter records to be disclosed without notice to the outfitter at the request of any state or federal agency for "law enforcement purposes." Outfitter records, as confidential information, may be disclosed to other governmental agencies only with the consent of the outfitter or pursuant to legal process.

24.171.410 OUTFITTER'S ASSISTANTS (1) remains the same.

(2) For each outfitter's assistant employed or contracted with by an outfitter, the following documentation procedures shall be followed:

(a) ~~An outfitter shall document the employment or retention of each outfitter's assistant.~~ The outfitter's assistant shall ~~keep a copy of the employment documentation at all times~~ during the service period. ~~Within 15 days of the first date the outfitter's assistant serves a client, the outfitter shall submit to the department a copy of the employment documentation and fee required in ARM 24.171.401. The employment documentation shall include:~~ have in the outfitter's assistant's possession the form prescribed by the department that shall provide the information required by (b)(i) through (b)(iii), along with the first date the outfitter's assistant serves a client.

~~(i) the name, license number, address, phone number, and, if available, e-mail address of the outfitter;~~

~~(ii) the signature of the outfitter;~~

~~(iii) the name, date of birth, address, telephone number, and, if available, e-mail address of the outfitter's assistant; and~~

~~(iv) the beginning and ending dates of the service period.~~

(b) Within 15 days of the first date the outfitter's assistant serves any client, the outfitter shall submit to the department the fee required in ARM 24.171.401 along with the following information ~~to~~ either electronically or on a form prescribed by the department:

(i) the name, license number, address, phone number, and e-mail address of the outfitter;

(ii) the signature of the outfitter;

(iii) the name, date of birth, address, phone number, and e-mail address of the outfitter's assistant;

(iv) the beginning and ending dates of the service period;

~~(i)~~ (v) an explanation of the emergency causing the need to employ or contract with the outfitter's assistant;

~~(ii)~~ (vi) an explanation for why the outfitter's assistant could not obtain a guide license before serving a client;

~~(iii)~~ (vii) a statement indicating whether the outfitter's assistant has applied for a guide license; and

~~(iv)~~ (viii) an affidavit by the outfitter that the outfitter has complied with all laws and rules relating to outfitter's assistants.

~~(c) Outfitters shall maintain a copy of this documentation and make the records available at all times in accordance with ARM 24.171.408 following the provision of services by the outfitter's assistant.~~

(3) remains the same.

AUTH: 37-1-131, 37-47-201, MCA
IMP: 37-1-131, 37-47-101, 37-47-201, 37-47-301, 37-47-325, 37-47-404, 37-47-405, MCA

REASON: The board is amending this rule to standardize language and to remove an "if available" reference to email as being no longer necessary. The proposed amendments are also necessary to clarify and simplify the documentation to be

carried by an outfitter's assistant, the information about an outfitter's assistant that an outfitter shall submit to the board, and to reorganize the rule for clarity.

24.171.412 SAFETY AND FIRST AID PROVISIONS (1) through (4) remain the same.

(5) Whenever ~~guests~~ clients are present, each watercraft; vessel; vehicle; primary, secondary, and temporary base of operations must possess a serviceable basic first aid kit.

(6) and (7) remain the same.

AUTH: 37-47-201, MCA
IMP: 37-47-201, MCA

REASON: The board is amending this rule to reflect the language of "client" used elsewhere in rule.

24.171.413 WATERCRAFT IDENTIFICATION (1) A person holding a valid outfitter or guide license who utilizes any type of watercraft while providing services shall prove evidence of licensure by displaying, at all times services are being provided, ~~board-issued~~ watercraft identification tags. The department shall email to each licensee a pdf with the form of the watercraft identification tag to be used, along with instructions for its use.

(2) The watercraft identification tags shall display the outfitter or guide license number for identification purposes.

(3) An unlicensed outfitter assistant shall display ~~board-issued~~ watercraft identification tags on each watercraft to be occupied by the outfitter assistant.

(4) One watercraft identification tag shall be affixed to each side of the watercraft at the bow, oarlock, or stern of the watercraft ~~and be of a size approved by the board so that they may be easily seen from another watercraft or from shore~~.

(5) Watercraft identification must use numbers not less than 1.5 inches in height, representing the outfitter or guide license number and be contrasting to any background.

(5) remains the same but is renumbered (6).

~~(6)~~ (7) Licensees may be provided with one set of two watercraft identification tags at the time of application for licensure or renewal, at no charge, upon request. ~~A fee will be assessed for any replacement in accordance with ARM 24.171.401.~~

AUTH: 37-1-131, 37-47-201, MCA
IMP: 37-1-134, 37-47-201, 37-47-301, 37-47-302, 37-47-303, 37-47-325, 37-47-405, MCA

REASON: The board has found in the past that it is reasonable and prudent to require licensees to display their license number while providing outfitting services via watercraft in an effort to enhance professionalism and protect the public. The department has experienced supply chain issues in providing watercraft decals to licensees in a timely manner. The board is proposing to place the responsibility of

printing and displaying watercraft identification on to each licensee utilizing watercraft. The proposal enhances clarity by directing licensees to where decals must be displayed and a minimum size for numbers representing a particular license. The proposal would save staff time in generating a daily report and mailing and eliminate procurement issues related to unique equipment, particularly printers and supplies.

24.171.501 APPLICATION FOR OUTFITTER LICENSE (1) and (2) remain the same.

(3) ~~The license issued shall designate, and thereby authorize the outfitter to conduct those functions of an outfitter that the applicant has qualified for.~~ Functions of an outfitter to be indicated on the license application and license issued, if qualified for, shall be one or more of the following:

(a) and (b) remain the same.

(c) if applicable ~~to the services provided in (3)(a) and (b),~~ and qualified for~~,~~ ~~one or more of the following~~:

(i) through (4) remain the same.

AUTH: 37-1-131, 37-47-201, MCA
IMP: 37-1-131, 37-47-101, 37-47-201, 37-47-301, 37-47-302, 37-47-305, 37-47-307, 37-47-308, MCA

REASON: The board is amending this rule to remove redundant language.

24.171.502 OUTFITTER QUALIFICATIONS (1) An ~~applicant for an outfitter license shall have the qualifications to provide all services and use all equipment necessary to provide the functions of an outfitter that the license will authorize the applicant to provide. In addition, the~~ applicant shall have:

(a) for ~~an outfitter applicant with~~ a watercraft endorsement:

(i) through (b) remain the same.

(2) ~~For purposes of this rule, verified~~ Verified experience includes:

(a) written affirmation on forms prescribed by the department from a licensed outfitter(s) in this state by whom the applicant was employed or retained, attesting to guiding experience~~. The written affirmation must quantify the number of guiding days the applicant earned while employed or retained by that outfitter~~; or

(b) written affirmation on forms prescribed by the department from outfitter(s) or guides from other states or provinces by whom the applicant was employed, attesting to guiding experience~~. The written affirmation must quantify the number of guiding days the applicant earned while under employment by that outfitter or guide~~; or

(c) remains the same.

(3) Three days of experience may be waived by the board for every day of training completed by the applicant at a department-approved outfitter or guide school. The maximum number of days of experience that may be waived is 30. The department shall approve guide schools based on the following minimum criteria:

~~(a) Training for purposes of the waiver must be obtained through a provider and course approved by the department based upon the following minimum criteria:~~

(i) remains the same but is renumbered (a).

~~(ii)~~ (b) the provider program must include instruction on topics relevant to being an outfitter, including but not limited to ~~any of the following topics~~:

(i) advertising;

(ii) marketing and public relations;

(iii) maintaining rate and refund schedules;

(iv) client and other records for board and other agency compliance;

(v) guiding techniques;

(vi) setting up of camp sites;

(vii) practical woodsmanship;

(viii) knowledge of firearms;

(ix) field preparation of trophies;

(x) knowledge of equipment, terrain (including water bodies), and hazards to competently provide a safe experience for those persons guided;

(xi) general board and other agency laws and requirements; federal and Montana fish and game laws and regulations;

(xii) knowledge of outfitting area;

(xiii) proper handling of fish and game;

(xiv) federal and Montana employment and wage requirements;

(xv) preservation of ecosystem; and

(xvi) maintaining present quality of wildlife and environment; and health, safety and welfare of clients, other public members, and employees.

(4) remains the same.

~~(5) All experience waivers granted under this rule shall be contingent upon the applicant completing the board's one-day education program within a time specified by the board.~~

AUTH: 37-1-131, 37-47-201, MCA
IMP: 37-1-131, 37-47-201, 37-47-302, 37-47-304, 37-47-307, 37-47-308, MCA

REASON: The board is amending this rule to remove duplicative provisions, and for easier understanding of the rule.

24.171.507 OUTFITTER EXAMINATION ~~(1) Applicants for the outfitter examination shall submit a completed license application accompanied by the required fee.~~

~~(2)~~ (1) ~~The following list is not intended to be exhaustive in detail. A wide range of issues and subtopics exist within each broad topic.~~ The examination categories include:

(a) and (b) remain the same.

(c) fishing; ~~and~~

(d) packing~~.~~; and

(e) boat or other floating craft and motorized watercraft.

(2) Applicants may access FWP regulations and study materials provided by the board in paper or electronic form, though any electronic device may only be used in airplane mode.

(3) remains the same.

(4) An applicant who fails the written examination may, within 15 days of notification of failure, review ~~his or her~~ their examination at the board office. During this review, the applicant may review only questions answered incorrectly. Correct answers to those questions will be furnished to the applicant. No representative of the board shall discuss the substance of the examination with the applicant. The applicant will not be allowed to record any information from examination during the review.

(5) ~~Before taking the outfitter examination, an applicant must submit a complete application, as defined in ARM 24.171.501.~~ An applicant may not repeat any failed portion of the outfitter examination sooner than 30 days from the date of failing.

AUTH: 37-1-131, 37-47-201
IMP: 37-47-201, 37-47-305

REASON: The board is amending this rule to remove redundant language and to clarify the form of the materials used by applicants taking an examination

24.171.508 INCOMPLETE ~~OUTFITTER AND GUIDE LICENSE~~ APPLICATIONS (1) Applications received by the board will be reviewed for completeness. ~~If an application is not complete when first received by the board, the applicant will be mailed a letter stating that the application is incomplete. The board may indicate which documents or information is missing in this letter. However, the applicant remains responsible for ensuring all required information and documents are timely submitted.~~ If the application is not completed within one year from the date the incomplete application first arrived, the application expires, and the applicant shall be required to submit a new application and fees before being considered for licensure.

AUTH: 37-1-131, 37-47-201, MCA
IMP: 37-1-131, 37-47-201, 37-47-304, MCA

REASON: The board is striking language that is part of the standard application procedure followed by all licensing boards and is unnecessary to state in rule.

24.171.512 INACTIVE LICENSE (1) remains the same.

(2) Outfitters whose licenses are inactive more than three years and who choose to become active must take the parts of the outfitter test related to outfitter laws and rules and fish and game laws and rules. An inactive outfitter who wishes to reactivate ~~his or her~~ a license must update ~~their~~ the operation plan.

(3) remains the same.

AUTH: 37-1-319, MCA
IMP: 37-1-319, MCA

REASON: The board is removing gendered language and pronouns for

standardization purposes.

24.171.520 OPERATIONS PLANS AND AMENDMENTS (1) An operations plan is prepared by the outfitter and submitted to the board and includes the information required in 37-47-304(2)(c), MCA.

~~(a)~~ (2) Fishing operations plans must include a summarization of the boundaries of the outfitter's fishing operation.

(a) If a fishing operations plan includes surface waters accessible only by private land or access points requiring a permit issued by a state or federal agency(ies), those surface waters must be described in detail, including the following information:

(i) the name of each water body, including the section of each river or stream, that may be utilized by the applicant while providing services;

(ii) a description of private land, by name of ranch and county where located, over which access is allowed; and

(iii) an affidavit by the outfitter to the board that the outfitter is in possession of any public land permits or licenses properly executed for federal or state public property where the outfitter is authorized to operate;

~~(iv)~~ (b) All other fishing operations plans may be described in detail pursuant to (2)(a), or an outfitter may summarize the boundaries of the outfitter's operations plan by referencing "all surface waters governed by the Montana Stream Access Law, 23-2-302, MCA, and accessible by public access points not requiring a permit restricting commercial use issued by a state or federal agency(ies)."

~~(b)~~ (3) Hunting operations plans must include a summarization of the locations and boundaries of the outfitter's hunting operation, which is where the outfitter is authorized to operate, provided in the following terms:

~~(i)~~ (a) the name of each public land agency, and owners of private lands that allow unrestricted public access and are managed under cooperative agreements with adjacent public lands;

~~(ii)~~ (b) a description of private land, by name of ranch and county where located, over which access is allowed;

~~(iii)~~ (c) an ~~affidavit~~ attestation by the outfitter to the board that the outfitter is in possession of any public land permits or licenses properly executed for federal or state public property where the outfitter is authorized to operate; and

~~(iv)~~ (d) the number of NCHU ~~per category~~.

~~(2)~~ (4) An outfitter may amend the operations plan on record by adding or subtracting any additional or replacement information and submitting the updated plan to the board, except ~~that when adding a service identified in (5), the outfitter must apply for an amendment to the outfitter's operations plan by stating in writing the proposed changes and submitting it to the board, along with the fee required in ARM 24.171.401~~ as required by (7).

(3) and (4) remain the same but are renumbered (5) and (6).

~~(5)~~ (7) All amendments, when adding a service, will be considered by the board using the same criteria as new applicants, including being required to take those parts of the outfitter examination that apply to the proposed amendment, if an outfitter is applying to add the following to the operations plan:

(a) and (b) remain the same.

(c) ~~watercraft used for fishing or hunting~~ boat, other floating craft, or motorized watercraft; or

(d) remains the same.

AUTH: 37-1-131, 37-47-201, MCA
IMP: 37-1-131, 37-47-201, 37-47-304, MCA

REASON: The board is amending this rule for easier readability and understanding by licensees and the public.

24.171.601 GUIDE QUALIFICATIONS (1) An applicant for a guide license shall have:

(a) one of the following:

(i) licensure as a guide from another jurisdiction with substantially equivalent licensing requirements to Montana;

~~(a) not less than one season of experience of hunting or fishing for the type of game for which the applicant will guide or have worked for the outfitter that signs the license for a period of at least six weeks and in the area to be guided in,~~ or

(ii) have successfully completed a ~~school licensed by a state, approved by the board, and that trains persons to be a guide~~ board-approved guide education program;

(b) knowledge of hunting and fishing techniques to provide the particular services contracted to ~~the~~ a client ~~by the endorsing outfitter~~; and

(c) knowledge of equipment, terrain, and hazards to competently provide a safe experience for ~~those persons he or she guides~~ clients.

(2) remains the same.

(3) A guide applicant must submit proof of current basic first aid certification.

(4) Each outfitter who uses the services of the guide during the license year shall sign and date the guide's license before allowing the guide to accompany a client.

AUTH: 37-1-131, 37-47-201, MCA
IMP: 37-47-101, 37-47-201, 37-47-303, 37-47-307, MCA

REASON: The board is amending this rule to include provisions of ARM 24.171.602 and for easier understanding. The board also is amending this rule to better articulate standards for applicants who do not have the endorsement of a licensed outfitter after staff recommendation based on confusion from applicants.

24.171.701 NCHU ~~CATEGORIES,~~ TRANSFERS~~,~~ AND RECORDS

~~(1) NCHU categories are as follows:~~

~~(a) Category 2, consisting of all clients served in the pursuit of big game or big game and upland game birds under combination licenses; and~~

~~(b) Category 3, consisting of all clients served in the pursuit of upland game birds, waterfowl, and turkeys.~~

(1) Only one NCHU is required of an outfitter per client, regardless of the number of big game, upland birds, waterfowl, or turkey pursued in a given year.

(2) through (5) remain the same.

(6) NCHU allocated to a deceased or incapacitated outfitter may be transferred ~~only~~ by a personal representative, or a person having power of attorney, guardianship, or other legal authority over the disposition of the outfitter's property or by a successor if an approved successorship has not terminated under ARM 24.171.504. NCHU will expire and shall not be revived if it is not transferred before the license or successorship terminates. ~~In cases where the outfitter dies and no successor is designated, someone authorized by the estate or the family of the outfitter~~ The estate, other legal authority, or successor must submit a NCHU transfer request form to the board within one year following the death or incapacity of the outfitter. Authorization ~~by the estate~~ is shown by a certified copy of a power of attorney form, letters of appointment as a guardian or personal representative, or by any other procedure allowed under Title 72, MCA, for the transfer of intangible personal property. The one year may be extended by a showing of good cause.

~~(7) Category 2 NCHU may be used to serve category 3 NCHU clients.~~

AUTH: 37-1-131, 37-47-201, MCA
IMP: 37-1-131, 37-47-201, MCA

REASON: The board is amending this rule to simply the use of NCHU into one category and define its application to one client per NCHU. Further language to clarify successorship has been added.

24.171.2301 UNPROFESSIONAL CONDUCT ~~AND MISCONDUCT~~ ~~(1) A violation of (1) or (3) by an outfitter, or (2) or (3) by a guide or outfitter's assistant is misconduct, specified as a basis for disciplinary action under 37-47-341, MCA. Such violation is also determined by the board to be unprofessional conduct, as provided in 37-1-319, MCA, specified as a ground for disciplinary action under 37-1-312, MCA. A violation of this rule may result in any sanction provided by 37-1-312 or 37-47-341, MCA. Unprofessional conduct by an outfitter's assistant is grounds for disciplinary action against the outfitter who employed or contracted with the outfitter's assistant. An outfitter shall:~~

(1) It is unprofessional conduct for a licensee or license applicant to violate any statute, rule, or standard of practice governing their scope of practice.

(2) In addition, the following is unprofessional conduct for a licensee or a license applicant:

(a) failing to respect the rights of others, private and public property, and failing to provide for the health, safety, and well-being of clients, employees, and the general public;

(b) providing services on public land in a manner that interferes with the general public access to public land or waterways or access to wildlife on public land;

(c) providing services detrimental to the wildlife or the environment where operating;

(d) failing to report to the board office, at the earliest opportunity, any violation of fish and game laws or outfitter, guide, and outfitter's assistant laws of which the licensee has knowledge;

(e) charging any fee for certifying or aiding or assisting any nonresident in procuring or attempting to procure a hunting license, or preference point;

(f) harassing, assaulting, or abusing clients, employees, outfitters, guides, or outfitter's assistants, or members of the general public, verbally or otherwise;

(g) abusing livestock;

(h) failing to produce records as required by ARM 24.171.410 (electronic proof of license or certification is permitted);

(i) failing to carry the licensee's current license and certifications at all times when providing services (electronic proof of license or certification is permitted);

(j) having hunting or fishing privileges or a wildlife conservation license suspended, revoked, placed on probation, or voluntarily surrendered in the state of Montana or any other jurisdiction;

(k) failing to have a valid wildlife conservation license before providing guiding services;

(l) acting beyond the scope of activities for which the individual is licensed;

(m) offering an unlicensed individual any watercraft identification tag identifying the occupant of the watercraft as a licensee; or

(n) failing to respond to board inquiries and requests; and

(o) failing to comply with or failing an inspection conducted by the department.

(3) The following is unprofessional conduct for outfitters and outfitter applicants:

(a) ~~not violate~~ violation of any law, rule, or policy of the Department of Fish, Wildlife and Parks concerning the certification of nonresidents for procuring hunting licenses;

(b) ~~not conduct~~ conducting any services or ~~allow~~ allowing services to be conducted by a supervised guide or outfitter's assistant on private or public land, except legal transportation across such lands, without first having obtained written permission from the landowner or written authorization from the agency administering public land, unless the landowner or agency does not require such permission;

(c) ~~not provide~~ providing services or ~~allow~~ allowing services to be ~~conducted~~ provided by a supervised guide or outfitter's assistant to clients outside the boundaries of the outfitter's approved operations plan;

(d) ~~not endorse~~ endorsing a guide license ~~until~~ before the outfitter has made reasonable inquiry and determined that the guide is qualified for licensure;

(e) ~~not interfere~~ interfering, by solicitation or otherwise, with a contract between another outfitter and client, including certifications for game license or permits, when it is known or reasonably should be known that a contract to provide services exists between that other outfitter and a client;

(f) failing to furnish each client with a current and complete rate schedule, which shall include all charges, a deposit policy, and deposit refund policy, all in writing, for services offered;

(g) failing to specify in writing, when offering services to a nonresident hunting client, the refund policy for failure by the prospective client to draw a license required to participate in the service offered;

(h) ~~not change~~ changing the rates and/or policies from those published

without the written consent of the client after the outfitter receives and accepts the deposit from the client;

(i) failing to set all contract terms and conditions with clients;

(j) failing to personally collect, or designate an agent to collect, all fees from clients. The outfitter is solely responsible for complying with the outfitter's deposit and deposit refund policy;

(k) failing to maintain current and accurate records;

(l) failing to make all client records available in accordance with ARM 24.171.408;

(m) failing to obtain and maintain a reasonable degree of supervision over each guide and outfitter's assistant to ensure that the services offered are being provided in accordance with the laws and rules, with particular regard to those laws and rules pertaining to the health, safety, and welfare of the participants, the public, and landowners;

(n) ~~not employ~~ employing or ~~retain~~ retaining a guide without first confirming that the guide has current basic first aid certification;

(o) ~~not exceed~~ exceeding the licensee's NCHU;

(p) ~~not use~~ using a guide prior to ensuring that the guide license is fully signed and dated;

~~(q) not use a guide with an inactive license~~;

~~(r)~~ (q) failing to comply with all laws and rules relating to outfitter's assistants; and

~~(s)~~ (r) when advertising services, failing to clearly designate the outfitter's registered business name or personal name and the outfitter's license number.

~~(2)~~ (4) ~~Guides shall~~ The following is unprofessional conduct for guides and guide applicants:

(a) ~~not advertise~~ advertising services to the general public~~, but may advertise their services directly to outfitters~~;

(b) ~~only make~~ making agreements with clients concerning monetary consideration or services offered, or collect fees from clients, ~~with~~ without the express consent of the supervising outfitter, ~~and only~~ as expressly provided in ARM 24.171.405;

(c) ~~not provide~~ providing services to clients who have not been specifically referred to the guide from the endorsing outfitter; and

(d) ~~not act~~ acting as a guide ~~under a~~ without a signed and dated guide license~~, unless and until the guide and the outfitter have first signed and dated the guide license~~.

~~(3) All licensees shall:~~

~~(a) provide services with respect for the rights of others, private and public property, and provide for the health, safety, and well-being of their clients, employees, and the general public;~~

~~(b) provide services on public land in a manner such that they do not interfere with the general public access to public land or waterways or access to wildlife on public land;~~

~~(c) provide their services in such a manner as not to be detrimental to the wildlife or the environment where they operate;~~

~~(d) report to the board office, at their earliest opportunity, any violation of fish~~

~~and game laws or outfitter, guide, and outfitter's assistant laws of which they have knowledge;~~

~~(e) not use alcohol or any other controlled substance as defined in Title 50, chapter 32, MCA, including marijuana and marijuana derivatives, to the extent that the use impairs the user physically or mentally, while engaged by a client;~~

~~(f) not charge any fee for certifying or aiding or assisting any nonresident in procuring or attempting to procure a hunting license;~~

~~(g) not harass, assault, or abuse clients, employees, outfitters, guides, or outfitter's assistants, or members of the general public, verbally or otherwise;~~

~~(h) not abuse livestock;~~

~~(i) produce their current license, proof of first aid certification, or employment documentation required by ARM 24.171.410 at the request of law enforcement or a representative of the board (electronic proof of license or certification is permitted);~~

~~(j) carry the licensee's current license and certifications at all times when providing services (electronic proof of license or certification is permitted);~~

~~(k) not have hunting or fishing privileges or a wildlife conservation license suspended, revoked, placed on probation, or voluntarily surrendered in the state of Montana or any other jurisdiction;~~

~~(l) have a valid wildlife conservation license before providing guiding services;~~

~~(m) not act beyond the scope of activities for which the individual is licensed;~~

~~(n) not offer for use by an unlicensed individual any watercraft identification identifying another licensee as the occupant of the watercraft;~~

~~(o) not intentionally misrepresent board laws or rules;~~

~~(p) not fail to respond to board inquiries and requests;~~

~~(q) not remit a "nonsufficient fund check" or a check on a closed account for board fees or fines; and~~

~~(r) comply with the statutes and rules applicable to licensees of the board.~~

AUTH: 37-1-131, 37-1-319, 37-47-201, MCA
IMP: 37-1-312, 37-1-316, 37-1-319, 37-47-201, 37-47-325, 37-47-341, MCA

REASON: The board is amending this rule to remove provisions which duplicate statute, and taking the opportunity to revise the rule for better readability and understanding by licensees and the general public. The board is further adding the provision that outfitter licensees may be subject to disciplinary action for failing department inspections. The board is further striking the reference to outfitters using guides with inactive licenses, as there is not an inactive status for guides.

4. The proposed new rules are as follows:

NEW RULE I ADMINISTRATIVE SUSPENSION (1) The board authorizes the department to:

(a) administratively suspend licenses for deficiencies set forth in 37-1-321(1)(a) though (e), MCA; or

(b) file a complaint pertaining to the deficiencies in (1) that are based on

repeated or egregious conduct, or that have co-occurring misconduct allegations that directly implicate public safety and may warrant formal disciplinary action.

(2) An administrative suspension is not a negative, adverse, or disciplinary action under Title 37, MCA, and is not reportable under federal law or the department's licensee lookup and license verification databank.

AUTH: 37-1-131, 37-68-201, MCA
IMP: 37-1-321, MCA

REASON: Section 37-1-321, MCA, permits the board to authorize the department to take certain non-disciplinary actions regarding licensees who are out of compliance with administrative licensure requirements such as not meeting continuing education requirements, failing to respond to continuing education audits, not paying required fees, not meeting initial licensing requirements, and noncompliance with board final orders. The board authorized the department to take these actions previously by motion. Reasonable necessity exists to adopt this rule to formally, publicly, and accessibly reiterate that authorization, so the public and licensees are aware of the authorization.

NEW RULE II FEE ABATEMENT (1) The Board of Outfitters adopts and incorporates by reference the fee abatement rule of the Department of Labor and Industry found at ARM 24.101.301.

AUTH: 37-1-131, 37-47-201, MCA
IMP: 17-2-302, 17-2-303, 37-1-134, MCA

REASON: The board has determined there is reasonable necessity to adopt and incorporate by reference ARM 24.101.301 to allow the board to authorize the department to perform renewal licensure fee abatements as appropriate and when needed, without further vote or action by the board. The department adopted ARM 24.101.301 to implement a means for the prompt elimination of excess cash accumulations in the licensing programs operated by the department.

5. The rules proposed to be repealed are as follows:

24.171.104 BOARD PURPOSE

AUTH: 37-47-201, MCA
IMP: 37-47-201, MCA

REASON: The proposed repeal is necessary because the rule is largely duplicative of 37-47-201, MCA, in violation of 2-4-305, MCA. The rule also contains policy statements that do not amplify or clarify statutory language and are not appropriate for administrative rules.

24.171.404 MILITARY TRAINING OR EXPERIENCE

AUTH: 37-1-145, MCA
IMP: 37-1-145, MCA

REASON: Reasonable necessity exists to repeal this rule, effective October 1, 2023, at the earliest, due to House Bill 583 (2023). That legislation amends 37-1-145, MCA, and eliminates the requirement for adoption by the board of a specific military training rule, setting forth specific obligations for the board to accept military experience for granting licensure. As such, the need for this rule is obsolete.

24.171.602 GUIDE LICENSE

AUTH: 37-1-131, 37-47-201, MCA
IMP: 37-47-101, 37-47-201, 37-47-301, 37-47-303, 37-47-307, 37-47-308, MCA

REASON: The board is combining ARM 24.171.601 and 24.171.602 because they each contain information related to the application process.

24.171.2101 RENEWALS

AUTH: 37-1-131, 37-47-201, MCA
IMP: 37-1-104, 37-1-141, 37-47-201, 37-47-302, 37-47-304, 37-47-306, 37-47-307, MCA

REASON: The proposed repeal is necessary because the rule is duplicative of ARM 24.101.408, 24.101.413, and 24.171.520.

24.171.2104 ACTIVE DUTY STATUS FOR LICENSEES IN THE MILITARY

AUTH: 37-1-131, 37-1-138, 37-47-201, MCA
IMP: 37-1-138, 37-47-307, MCA

REASON: The board is repealing this rule as duplicative of 37-1-138, MCA

24.171.2305 WEB SITE POSTING OF LICENSE DISCIPLINE

AUTH: 37-1-131, 37-47-201, MCA
IMP: 37-1-131, 37-1-311, 37-47-201, MCA

REASON: The board is striking this rule as unnecessary. If a licensee is disciplined by the board, or if a license application is denied based on unprofessional conduct, those are public disciplinary actions that are posted to the website.

6. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728, Helena, Montana 59624. Comments must be received no later than 5:00 p.m., August 23, 2024.

7. An electronic copy of this notice of public hearing is available at dli.mt.gov/rules and rules.mt.gov.

8. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728, Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. Pursuant to 2-4-111, MCA, the agency has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

11. Department staff has been designated to preside over and conduct this hearing.

BOARD OF OUTFITTERS,
JOHN WAY, CHAIR

/s/ JENNIFER STALLKAMP
Jennifer Stallkamp
Rule Reviewer

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 16, 2024.

BEFORE THE BOARD OF PHARMACY
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.174.301, 24.174.401, 24.174.407, 24.174.503, 24.174.526, 24.174.602, 24.174.604, 24.174.701, 24.174.712, 24.174.801, 24.174.802, 24.174.803, 24.174.804, 24.174.805, 24.174.806, 24.174.807, 24.174.814, 24.174.819, 24.174.823, 24.174.830, 24.174.831, 24.174.832, 24.174.833, 24.174.835, 24.174.836, 24.174.840, 24.174.901, 24.174.903, 24.174.1412, 24.174.1501, 24.174.1503, 24.174.1505, 24.174.1506, 24.174.1603, 24.174.1604, 24.174.1605, 24.174.1606, 24.174.1702, 24.174.1706, 24.174.1708, 24.174.1709, 24.174.1711, 24.174.2104, and 24.174.2301, the adoption of NEW RULE I, and the repeal of ARM 24.174.303, 24.174.402, 24.174.504, 24.174.507, 24.174.525, 24.174.527, 24.174.528, 24.174.601, 24.174.603, 24.174.605, 24.174.611. 24.174.612, 24.174.613, 24.174.817, 24.174.818, 24.174.834, 24.174.902, 24.174.1206, 24.174.1502, 24.174.1504, 24.174.1507, 24.174.1508, 24.174.1509, 24.174.1510, 24.174.1601, 24.174.1602, 24.174.1607, 24.174.1608, 24.174.1609, 24.174.1703, 24.174.1704, 24.174.1705, 24.174.1713, and 24.174.1715 pertaining to the Board of Pharmacy	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On August 15, 2024, at 10:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, https://mt-gov.zoom.us/j/81896489120

Meeting ID: 818 9648 9120, Passcode: 344863
-OR-
b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 818 9648 9120, Passcode: 344863

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on August 8, 2024, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

24.174.301 DEFINITIONS (1) through (3) remain the same.

(4) "Board of Pharmaceutical Specialties" (BPS) means an independent nongovernmental certification body that provides recognition of persons involved in the advanced practice of pharmacy specialties through development and administration and a certification process that is consistent with public policy regarding the credentialing of healthcare professionals.

(5) "Chart order" means a lawful order entered on the chart or a medical record of a patient or resident of a facility by a practitioner, or his or her designated agent, for a drug or device and shall be considered a prescription.

(4) remains the same but is renumbered (6).

~~(5)~~ (7) "Clean room" means ~~a room~~ an environment in which the concentration of airborne particles is controlled and monitored with parameters including high efficiency particulate air (HEPA) filtered airflow, pressurization, temperature, and humidity.

(8) "Clinical practice experience," for purposes of issuing a clinical pharmacist practitioner endorsement, means working in a pharmacy practice setting which includes at least 50 percent of time spent in:

(a) communication with healthcare professionals and patients regarding drug therapy, wellness, and health promotion;

(b) designing, implementing, monitoring, evaluating, and modifying or recommending modifications in drug therapy to optimize patient care;

(c) identifying, assessing, and solving medication-related problems and providing a clinical judgment as to the continuing effectiveness of the therapeutic plan;

(d) conducting physical assessment applicable to the area of practice, evaluating patient problems, and ordering and monitoring medications, and/or laboratory tests in accordance with established standards of practice;

(e) referring patients to other healthcare professionals as appropriate;

(f) integrating relevant diet, exercise, and other non-drug therapy with pharmaceutical care;

(g) retrieving, evaluating, utilizing, and managing data and professional resources;

(h) documenting interventions and evaluating outcomes; and

(i) integrating national standards for the quality of healthcare.

(9) "Collaborative practice agreement" is defined as set forth in ARM 24.174.524.

(6) through (11) remain the same but are renumbered (10) through (15).

~~(12)~~ (16) "Drug order" means a written or electronic order issued by an authorized practitioner, or a verbal order promptly transcribed, for the compounding and dispensing of a drug or device to be administered to patients within ~~the~~ a facility and shall be considered a prescription.

(13) remain the same but is renumbered (17).

(18) "Electronic prescription" means a prescription that is generated on an electronic application and is transmitted to a pharmacy as an electronic data file. Controlled substance prescriptions for Schedules II through V shall be transmitted in accordance with DEA requirements as outlined in 21 CFR Part 1300.

(14) through (21) remain the same but are renumbered (19) through (26).

(27) "Internship" means the practical experiences required to provide an intern, as defined in 37-7-101, MCA, with the knowledge and practical experience necessary for professional licensure as a pharmacist.

(28) "Internship period" means 300 Introductory Pharmacy Practice Experience (IPPE) hours, and 1,440 Advanced Pharmacy Practice Experience (APPE) hours of practical experience in an approved pharmacy, hospital, or other facility or location relevant to the pharmacy profession. The intern may acquire the internship hours concurrently with school attendance in approved courses, introductory pharmacy practice experience, and advanced pharmacy practice experience, or demonstration projects in the Pharm.D. program. The intern may acquire a maximum of 48 hours experience per calendar week.

(22) through (33) remain the same but are renumbered (29) through (40).

(41) "Preceptor" means a pharmacist or other approved individual who meets those requirements for the supervision and training of an intern. A preceptor shall have overall responsibility for the required training of the intern.

(34) through (44) remain the same but are renumbered (42) through (52).

(53) "Supervising pharmacist" means the registered pharmacist who is serving as the pharmacist on duty and is in charge of the day-to-day supervision of the pharmacy personnel.

(54) "Supervision" means that all drug distribution or dispensing activities, immunizations, or other activities performed by pharmacy personnel are under the direction of a registered pharmacist.

(45) remains the same but is renumbered (55).

AUTH: 37-7-201, 50-32-314, MCA

IMP: 37-7-102, 37-7-201, 37-7-301, 37-7-306, 37-7-321, 37-7-406, 37-7-603, 37-7-604, 37-7-605, 50-32-314, MCA

REASON: The board is combining multiple definition rules into a single rule for ease of understanding. The board is updating the definition of "clean room" for clarity and

is adding a new definition for "electronic prescription" to clarify ARM 24.174.840. The board is updating the definition of "drug order" to clearly state that a drug order is a prescription and removing unnecessary references to "drug order" throughout this rule package. The board is also expanding the definition of "preceptor" to include other approved individuals who meet training requirements and adding reference to a preceptor's overall responsibility that had previously been in the definition of "supervision." In addition, the board is revising the definition of "supervising pharmacist" to include all pharmacy personnel, not just interns. This change reflects practice and the supervising pharmacist having oversight of all pharmacy personnel, including pharmacy technicians, as outlined in ARM 24.174.705, 24.174.711, and 24.174.712, and interns, clerks, and other individuals authorized to assist the pharmacist.

24.174.401 FEE SCHEDULE

(1) Application for pharmacist licensure transfer $180

(2) ~~Original registration for pharmacist~~ Pharmacist initial license 70

(3) remains the same.

(4) ~~Original registration for clinical~~ Clinical pharmacist practitioner initial endorsement/registration and annual renewal fee 25

~~(5) Clinical pharmacist practitioner annual renewal fee 25~~

~~(6)~~ (5) Community and institutional pharmacy ~~original certification~~ initial license (includes ~~original~~ initial license, change in location, and change in ownership) 240

(7) remains the same but is renumbered (6).

~~(8)~~ (7) ~~Family planning limited~~ Limited service pharmacy facility, ~~certified pharmacy license~~ (~~original~~ initial license and annual renewal) 45

(9) through (11) remain the same but are renumbered (8) through (10).

~~(12)~~ (11) Utilization plan ~~approval~~ initial endorsement and annual renewal fee 75

~~(13) Annual utilization plan renewal fee 75~~

(14) and (15) remain the same but are renumbered (12) and (13).

~~(16)~~ (14) Wholesale distributor initial license and annual renewal fee 240

~~(17) Annual wholesale distributor renewal 240~~

~~(18)~~ (15) Out-of-state mail service pharmacy~~/telepharmacy~~ initial license and annual renewal fee 240

~~(19) Out-of-state mail service pharmacy/telepharmacy renewal 240~~

(20) remains the same but is renumbered (16).

~~(21) Inactive pharmacist annual renewal fee 15~~

~~(22)~~ (17) Outpatient center for surgical services (~~original~~ initial or renewal) 45

~~(23)~~ (18) Drugs dispensed by a medical practitioner ~~original~~ initial registration 240

(24) through (29) remain the same but are renumbered (19) through (24).

(25) The fees to be assessed for registration to manufacture, distribute,

dispense, conduct research on, or analyze a dangerous drug shall be assessed the following fees upon application and annual renewal:

(a) manufacture	100
(b) distribute	100
(c) dispense – pharmacy	75
(d) dispense – outpatient centers for surgical services	75

(26) The fees for registration to manufacture, distribute, or supply medical gases shall be assessed according to the following annual fee:

(a) medical gas distributor	75
(b) medical gas supplier	75

AUTH: 37-1-134, 37-2-104, 37-7-201, 37-7-604, 37-7-610, 37-18-803, 50-32-314, MCA
IMP: 37-1-134, 37-2-104, 37-7-201, 37-7-306, 37-7-321, 37-7-604, 37-7-605, 37-7-703, 37-18-803, 50-32-314, MCA

REASON: The board is combining all fee rules into a single rule for standardization purposes, including the fees listed in ARM 24.174.402 for dangerous drug fee schedule, and ARM 24.174.1206 for medical gas fee schedule. The board is also taking the opportunity to combine initial licensure and annual renewal fees where the fees are identical. See also ARM 24.174.504 REASON.

24.174.407 QUALITY ASSURANCE PROGRAM REQUIREMENTS (1) Each pharmacy or other facility licensed by the board shall ~~implement or~~ have in place a quality assurance program to detect, identify, and prevent ~~prescription~~ errors, for improving public safety, or both. The quality assurance program shall include necessary documentation, internal reporting, and assessment of ~~prescription~~ errors to determine the root cause and contributing factors, such as system or process failures, provide an appropriate response, and communicate the findings to all pharmacy personnel.

~~(2) The primary purpose of the quality assurance program shall be to advance error prevention by analyzing, individually and collectively, investigative and other pertinent data collected in response to a prescription error to assess the cause and any contributing factors such as system or process failures.~~

~~(3) Each pharmacy, corporation, or health system shall use the findings of its quality assurance program to develop pharmacy systems and workflow processes designed to prevent prescription errors, as well as communicate those findings to all pharmacy personnel.~~

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

REASON: The board is consolidating the rule into a single section to reduce repeated language and clarify expectations for quality assurance programs.

24.174.503 ADMINISTRATION OF VACCINES BY PHARMACISTS, INTERNS, AND PHARMACY TECHNICIANS (1) through (4) remain the same.

(5) ~~The authority of a pharmacist to administer immunizations may not be delegated; however, a~~ An immunization-certified pharmacist may delegate the administration of immunizations to a pharmacy intern or a pharmacy technician ~~pharmacy intern may immunize~~ under the direct supervision of ~~an immunization-certified pharmacist or other healthcare provider qualified in vaccine administration and deemed appropriate by the preceptor~~ the pharmacist upon meeting the ~~immunization-certified~~ immunization certification requirements listed in 37-7-105, MCA, and this rule. The board shall issue an immunization endorsement on the license of an intern or pharmacy technician upon receipt of qualifications being met.

(6) The board shall randomly select renewal notice forms of immunization-certified pharmacists and pharmacy technicians for audit and verification of the requirements listed in this rule.

AUTH: 37-7-201, MCA
IMP: 37-7-101, 37-7-105, 37-7-201, MCA

REASON: The board is updating this rule to reflect pharmacy intern and pharmacy technician immunization authority in 37-7-105, MCA, pursuant to 2023 House Bill 710. For auditing, pharmacy technicians are added to the audit procedure but not interns as they do not renew their license, and the school of pharmacy has additional oversight of their practice experience.

24.174.526 ~~REQUIREMENTS TO BECOME A~~ CLINICAL PHARMACIST PRACTITIONER QUALIFICATIONS AND REQUIREMENTS (1) An applicant for a clinical pharmacist practitioner registration shall:

(a) remains the same.

(b) pay a required registration fee ~~as prescribed by the board~~ and annual renewal fee;

(c) through (2) remain the same.

(3) A clinical pharmacist practitioner shall complete an annual renewal of a pharmacist's license and pay the clinical pharmacist practitioner endorsement renewal fee.

(4) The board shall audit clinical pharmacist practitioners for compliance with continued registration.

AUTH: 37-7-201, MCA
IMP: 37-7-201, 37-7-306, MCA

REASON: The board is combining ARM 24.174.526 and 24.174.527 regarding clinical pharmacist practitioner requirements to consolidate information and to standardize rule format for listing qualifications, requirements, and renewals, similar to Subchapter 18 for medical practitioner dispensers.

24.174.602 INTERNSHIP REQUIREMENTS (1) The experience required to obtain licensure as a pharmacist shall be that instruction period composed of computed time obtained under the supervision of the preceptor in ~~an approved~~ a site approved by the school in which the intern is enrolled.

(2) An intern may practice only under the ~~immediate personal~~ supervision of a supervising pharmacist.

~~(3) Application shall be made on the intern application form prescribed by the board. Registration must be obtained prior to commencing work as an intern.~~

~~(4) The intern shall make such reports and certifications as required under the approved program and as required by the board.~~

(3) An intern registration may be issued to an individual who:

(a) is currently enrolled in an accredited pharmacy program;

(b) is a graduate of an accredited pharmacy program serving an internship; or

(c) is a graduate of a pharmacy program located outside the United States of America which is not accredited and who is licensed pursuant to (14).

(4) All intern applicants must:

(a) submit a completed application to the board;

(b) pay the required fee; and

(c) complete at least one day of the accredited pharmacy program.

(5) remains the same.

~~(6) The intern shall be responsible for ensuring that the preceptor has proper certification.~~

~~(7) The intern is responsible for properly submitting all forms and hour reports under the approved program directly to the school of pharmacy.~~

(6) Intern and internship documentation, hours, and forms shall be furnished by the school of pharmacy and filed directly to the school of pharmacy.

(a) An intern must be licensed by the board before computed time is credited.

(7) An out-of-state intern must register with the board and comply with rules related to internship and this chapter.

(8) remains the same.

~~(9) An intern shall be:~~

~~(a) a student currently enrolled in an accredited pharmacy program;~~

~~(b) a graduate of an accredited pharmacy program serving an internship; or~~

~~(c) a graduate of a pharmacy program located outside the United States of America which is not accredited and who is licensed pursuant to ARM 24.174.605.~~

(10) remains the same but is renumbered (9).

~~(11) An intern registration may be issued to a student who:~~

~~(a) is currently enrolled in an accredited pharmacy program;~~

~~(b) has submitted a completed application to the board;~~

~~(c) has paid the required fee; and~~

~~(d) has completed at least one day of the accredited pharmacy program.~~

(12) remains the same but is renumbered (10).

~~(13)~~ (11) Intern certificate of registration shall be displayed ~~in the approved training area~~ at any experiential or employment location.

(14) remains the same but is renumbered (12).

(13) Suspension of an intern from university or college attendance concurrently suspends an intern's certificate of registration.

(14) A graduate of a foreign school of pharmacy seeking licensure to practice as a pharmacy intern in the state of Montana shall:

(a) submit proof of a Foreign Pharmacy Graduate Examination Committee (FPGEC) Certification from the National Association of Boards of Pharmacy (NABP), which includes the following:

(i) Test of Spoken English (TSE);

(ii) Test of English as a Foreign Language (TOEFL); and

(iii) Foreign Pharmacy Graduate Equivalency Exam (FPGEE);

(b) achieve NABP minimum passing scores on all tests and examinations;

(c) have an internship practice site identified and that practice site must be a licensed pharmacy in good standing with the board;

(d) have an internship preceptor identified and that preceptor must:

(i) be a licensed pharmacist in good standing with the board; and

(ii) be a registered preceptor in good standing with the board;

(e) appear before the board with their preceptor; and

(f) complete 1,740 hours of internship in the United States in order to be eligible for pharmacist licensure in Montana.

AUTH: 37-1-131, 37-7-201, MCA
IMP: 37-7-201, MCA

REASON: The board is revising this rule to consolidate multiple intern rules (ARM 24.174.601, 24.174.602, 24.174.605, 24.174.611, 24.174.612, and 24.174.613) and to reconcile current procedures based on school of pharmacy operations and oversight of intern requirements.

24.174.604 PRECEPTOR REQUIREMENTS (1) Each ~~pharmacist~~ preceptor shall:

(a) apply for board approval to be a preceptor when the preceptor is a pharmacist. For pharmacists, the board shall issue an endorsement on the pharmacist's license when requirements are met;

(b) remains the same.

(c) be actively engaged in ~~active practice~~ the pharmacy profession or other approved discipline or healthcare profession while acting as preceptor;

(d) through (f) remain the same.

(g) make ~~such~~ reports and certifications as required ~~under the approved program~~ by a school of pharmacy;

~~(h) notify the board of any change of address or employment within 30 days. Change of employment shall serve to suspend preceptor approval until such time as reevaluation is made by the board;~~

~~(i)~~ (h) not be permitted to leave an intern to work alone or unsupervised to assume the responsibility of a pharmacist; and

~~(j)~~ (i) complete a training course as approved by the ~~board~~ ACPE or the school of pharmacy prior to applying for a pharmacist preceptor endorsement.

(2) The repackaging, labeling, ~~and~~ counseling, dispensing, or distribution of drugs ~~for distribution~~ shall be under the supervision of a supervising pharmacist.

(3) remains the same.

AUTH: 37-7-201, MCA

IMP: 37-7-201, MCA

REASON: The board is revising this rule to be more flexible and reflect current preceptor procedures, expectations, use of other healthcare providers as appropriate, and the variety of experiential locations utilized by a school of pharmacy for intern activity. The board is also clarifying its role in issuing a preceptor endorsement only to pharmacist licensees. The board is removing reference to preceptor address change notification as duplicative to ARM 24.174.403.

24.174.701 PHARMACY TECHNICIAN REGISTRATION REQUIREMENTS

(1) To be registered as a pharmacy technician in this state, the applicant shall:

~~(a) be at least 18 years old;~~

~~(b) be a high school graduate or have attained an equivalent degree;~~

(c) remains the same but is renumbered (a).

~~(d)~~ (b) submit an application on a form prescribed by the board;

(e) and (f) remain the same but are renumbered (c) and (d).

(2) An applicant for registration as a pharmacy technician in this state may apply for a temporary practice permit as authorized by 37-1-305, MCA, valid for ~~one year~~ two years from the date the permit was issued.

(3) remains the same.

AUTH: 37-1-131, 37-7-201, MCA
IMP: 37-1-305, 37-7-201, MCA

REASON: The board is amending this rule to remove barriers to pharmacy technician licensure and limitations on staff recruitment. Removing the requirements of being 18 years old and having a high school diploma or equivalent will allow for greater opportunities to engage with or employ high school students and others who may be interested in the pharmacy profession but currently do not meet licensure requirements. In addition, extending the temporary practice permit (provisional registration) from one year to two years will better accommodate the timeline individuals have to complete more complex training and practice requirements to be eligible to take pharmacy technician certification exams. These changes also reduce burden on pharmacy managers as they recruit, provide training programs, provide practice experiences, assist in technician certification exam preparation, and try to retain pharmacy technicians in a competitive work environment.

24.174.712 APPLICATION FOR APPROVAL OF UTILIZATION PLAN

(1) The pharmacist-in-charge may apply to the board for approval to use the services of a pharmacy technician, including the use of authorized healthcare licensees, as described in ARM 24.174.701(1)~~(f)~~(d), to assist pharmacists in the admission of vaccines, in compliance with state and federal requirements, by submitting to the board:

(a) through (c) remain the same

(d) any changes in the technician utilization plan, including technician training and use of other healthcare licensees for administration of vaccines, as described in

ARM 24.174.701(1)~~(f)~~(d), must be ~~resubmitted to the board for approval before implementation of the changes by the supervising pharmacist~~ provided upon inspection by the board.

(2) through (4) remain the same.

AUTH: 37-7-201, MCA
IMP: 37-7-201, 37-7-308, 37-7-309, MCA

REASON: The board is updating this rule to reduce paperwork burden on licensees and provide for a revised technician utilization plan to be reviewed by the board through the inspection process, rather than submitting updates directly to the board.

24.174.801 GENERAL LICENSE REQUIREMENTS (1) The board shall ~~grant~~ issue a license for the operation of a pharmacy in the state of Montana when ~~it is plainly shown that~~:

(a) through (3) remain the same.

(4) No license may be issued whose intended place of business is a personal residence.

AUTH: 37-7-201, MCA
IMP: 37-7-201, 37-7-321, MCA

REASON: The board is amending this rule to standardize with wholesale drug distributor license requirements and to update language.

24.174.802 NEW PHARMACY (1) and (2) remain the same.

(3) All new pharmacies shall be in compliance with ARM 24.174.801 and ARM 24.174.814 at the time the pharmacy is opened for business.

AUTH: 37-7-201, MCA
IMP: 37-7-321, MCA

REASON: The board is amending this rule to address questions staff receive regularly from new pharmacy applicants as to expectations upon opening.

24.174.803 CHANGE IN LOCATION (1) Whenever a ~~pharmacy~~ facility licensed by the board changes its physical location, including within the existing business location, it shall submit a new schematic or floor plan, for board approval.

(2) Whenever a ~~pharmacy~~ facility changes its physical location outside of its then existing business location, its original license becomes void and must be surrendered. ~~The pharmacy shall submit a~~ A new license application, including a new schematic and floor plan of the new location, shall be submitted for the board's approval at least 30 days before such change occurs.

AUTH: 37-7-201, MCA
IMP: 37-7-321, MCA

REASON: The board is updating this rule for clarity purposes due to questions staff receive from licensees regarding change in location requirements for any facility license.

24.174.804 CHANGE IN OWNERSHIP (1) When a pharmacy, or other facility licensed by the board, changes ownership, ~~the original license becomes void and must be surrendered to the board, and~~ a new license must be obtained by the new owner or owners. The owner shall submit a new license application at least 30 days prior to the change in ownership. The application must be reviewed by the board or its designee before the license may be issued. The original license will expire at the time of license renewal unless the board is notified of an alternative closure date.

(2) remains the same.

(3) A change due to corporate restructuring or business structure for legal or tax purposes does not constitute an ownership change unless the provisions of (2) are met. The licensee shall notify the board of the change but a new application and license are not required.

~~(3)~~ (4) The board must be notified in writing when five to 50 percent of the equitable ownership of a facility business license is transferred in a single transaction or in a related series of transactions to one or more persons or any other legal entity.

AUTH: 37-7-201, MCA
IMP: 37-7-201, 37-7-321, MCA

REASON: The board is updating this rule for clarity purposes due to questions staff receive from licensees regarding ownership change requirements and when a new application is required.

24.174.805 CHANGE OF PHARMACIST-IN-CHARGE OR PERSON-IN-CHARGE (1) When service as the pharmacist-in-charge of a pharmacy ends ~~ceases to be the pharmacist-in-charge~~, the pharmacist ~~will be held~~ is responsible for notifying the board in writing of such termination of services.

(2) Within ~~72 hours~~ 10 days of termination of services of the pharmacist-in-charge, a new pharmacist-in-charge must be designated in writing on the appropriate board-approved form and filed with the board.

(3) The requirements in (1) and (2) apply to a person-in-charge for other facilities licensed by the board for which a pharmacist is not required to be the person-in-charge.

AUTH: 37-7-201, MCA
IMP: 37-7-201, 37-7-321, MCA

REASON: The board is updating this rule for clarity purposes due to questions staff receive from licensees and to include facilities which are not required to have a pharmacist-in-charge but a person-in-charge. The timeline to update the board of a change is extended from 72 hours to 10 days to better accommodate the logistics of

such notifications and align with other provisions. Failure to comply is addressed in ARM 24.174.2301.

24.174.806 FACILITY LICENSES TO BE POSTED (1) The pharmacy license or other facility license issued by the board must be posted in a conspicuous place in the ~~pharmacy~~ facility.

AUTH: 37-7-201, MCA
IMP: 37-7-321, MCA

REASON: The board is updating this rule for clarity purposes due to questions received by staff and for consolidation purposes.

24.174.807 CLOSURE OF A ~~PHARMACY~~ FACILITY (1) Upon permanent closure of a pharmacy or other facility licensed by the board, the original license becomes void ~~and must be surrendered to the board within ten days~~.

(2) Whenever a ~~pharmacy~~ facility permanently closes, the owner shall notify the board of the closing no later than 15 days prior to the anticipated date of closing. The notice shall be submitted in writing and shall include the following information:

(a) the date ~~the pharmacy will close~~ of closure;

(b) remains the same

(c) the names and addresses of any persons who will acquire any ~~legend~~ prescription drugs from the closing ~~pharmacy~~ facility, if known at the time the notice is filed~~.~~; and

(d) the name and phone number of the property owner.

(3) No later than 15 days after the ~~pharmacy~~ facility has closed, the owner shall submit to the board written confirmation that:

(a) all ~~legend~~ prescription drugs have been either:

(i) remains the same.

(ii) transferred to an authorized person(s), including the names and addresses of the person(s) to whom the ~~legend~~ prescription drugs were transferred.

(b) and (c) remain the same.

(d) all ~~pharmacy~~ facility labels and blank prescriptions which were in the possession of the ~~pharmacy~~ facility were destroyed; ~~and~~

(e) all signs and symbols indicating the presence of the ~~pharmacy~~ facility have been removed~~.~~; and

(f) all contents of medication collection receptacles or disposal kiosks, if any, have been shipped and the containers have been removed.

AUTH: 37-7-201, MCA
IMP: 37-7-201, 37-7-321, MCA

REASON: The board is updating this rule for clarity purposes due to questions received by staff and for consolidation purposes. The board is adding (3)(f) to address federal requirements and to include needed information upon a closure.

24.174.814 SECURITY OF PHARMACY AND RECORDS (1) through (3)

remain the same.

(4) ~~Sections (1) and (2) of this rule shall be effective February 1, 2004~~ An automated prescription record keeping system(s) (system) may be employed for prescription record keeping.

(a) The system shall contain adequate safeguards or security of the records to maintain the confidentiality and accuracy of the prescription or drug order information. Safeguards against unauthorized changes in data after the information has been entered and verified by the registered pharmacist shall be provided by the system.

(b) The system must comply with all applicable state and federal privacy and security requirements.

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

REASON: The board is combining ARM 24.174.817 and 24.174.818 into this security rule for standardization purposes, and to repeal outdated language and unnecessary detail that is part of standard operating procedures for pharmacy dispensing systems.

24.174.819 SANITATION AND EQUIPMENT REQUIREMENTS

(1) Pharmacies shall at all times be operated by a registered pharmacist in a sanitary manner, pursuant to 50-31-103 and 50-31-305, MCA. There must be in use a safe and pure water supply and facilities for the proper storage and handling of supplies and stocks.

(2) and (3) remain the same.

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

REASON: The board is adding this reference at the request of staff to address questions from licensees.

24.174.823 CENTRALIZED ~~PRESCRIPTION~~ FILLING AND REMOTE ORDER PROCESSING OF PRESCRIPTIONS ~~DRUG ORDERS~~ IN COMMUNITY PHARMACIES ~~(1) A pharmacy may outsource prescription drug order filling or processing to a central filling or processing pharmacy provided the pharmacies:~~

~~(a) have the same owner or have entered into a written contract or agreement that outlines the services to be provided and the responsibilities and accountabilities of each pharmacy in compliance with federal and state laws, rules, and regulations; and~~

~~(b) share a common electronic file.~~

(1) Central or remote prescription processing services may be utilized by a licensed pharmacy if the following conditions have been met:

(a) remote licensed staff must be licensed in Montana as a pharmacist or a pharmacy technician or, if located out-of-state, be licensed in their home state and work under the authority of a pharmacy licensed in Montana pursuant to (8); and

(b) policies and procedures must be in place for remote licensed staff working off-site to process prescriptions or other applicable duties to ensure appropriate tasks, security, and privacy provisions are met. The policies and procedures shall:

(i) be reviewed and documented annually;

(ii) include a continuous quality improvement program;

(iii) comply with federal and state statutes and regulations; and

(iv) be available for inspection by the board.

(2) A pharmacy that outsources prescription ~~drug order~~ filling or processing to another pharmacy shall, prior to outsourcing a prescription ~~drug order~~:

(a) notify the patient or the patient's agent that prescription filling or processing may be outsourced to another pharmacy and accommodate patient choice not to have the prescription outsourced;

(b) and (c) remain the same.

~~(3) The patient shall have the choice not to have the prescription outsourced.~~

(4) remains the same but is renumbered (3).

~~(5)~~ (4) The delivering pharmacy is responsible for providing patient counseling.

~~(6)~~ All central filling ~~or processing~~ of prescriptions ~~drug orders~~ must be completed in a licensed pharmacy.

(7) remains the same but is renumbered (5).

~~(8)~~ (6) An out-of-state pharmacy providing central processing or central filling services to pharmacies in the state of Montana must be registered as an out-of-state mail service pharmacy and comply with all Montana statutes and rules ~~regulating mail order pharmacies~~.

~~(9)~~ (7) ~~A policy and procedure manual~~ Policies and procedures relating to centralized filling or processing activities shall be maintained at all pharmacies involved in centralized filling or processing~~. An electronic copy of the policy and procedure manual shall be submitted to the board. Thereafter the manual~~ and shall be available for inspection ~~and copying~~ by the board. The policies and procedures shall:

~~(a) outline the responsibilities of each of the pharmacies which must include but is not limited to:~~

~~(i) receiving, interpreting, or clarifying prescription orders;~~

~~(ii) entering data and transferring prescription information;~~

~~(iii) obtaining refill and substitution authorization information;~~

~~(iv) performing drug regimen review;~~

~~(v) interpreting clinical data for prior authorization dispensing;~~

~~(vi) performing therapeutic interventions; and~~

~~(vii) providing drug information.~~

~~(b) include a list of the name, address, telephone numbers, and license or registration number of the pharmacies participating in central filling or processing; and~~

~~(c) include policies and procedures for:~~

~~(i) protection of the confidentiality and integrity of patient information;~~

~~(ii) maintenance of appropriate records to identify the names, initials, or identification codes and specific activities of each of the pharmacists and/or technicians who performed any processing; and~~

~~(iii) compliance with federal, DEA, and state laws and regulations;~~

~~(iv) operation of a continuous quality improvement program for pharmacy services designed to objectively and systematically monitor and evaluate the quality and appropriateness of patient care, pursue opportunities to improve patient care, and resolve identified problems; and~~

~~(v) annual review of the written policies and procedures and documentation of such review.~~

(a) include the annual review of the competencies of pharmacists providing remote and/or centralized prescription processing or filling services;

(b) be reviewed and documented annually;

(c) include a continuous quality improvement program;

(d) comply with federal and state statutes and regulations; and

(e) be available for inspection by the board.

AUTH: 37-7-201, MCA
IMP: 37-7-201, 37-7-321, MCA

REASON: The board is amending this rule to distinguish between remote licensed staff performing central/remote services remotely, not at the physical location of the pharmacy, versus pharmacies as described in (2), at the request of staff after numerous questions from licensees. The board is further updating language and striking duplicative language from other provisions of Subchapter 8.

24.174.830 LIMITED SERVICE PHARMACY (1) A limited service pharmacy is defined as a family planning clinic:

(a) operating under contract with the ~~Department of Public Health and Human Services (DPHHS)~~ state to provide such services; or

(b) providing pharmaceutical care under the review of a consulting pharmacist and dispensing ~~legend~~ prescription drugs, but which is not under contract with ~~DPHHS~~ the state.

(2) Each limited service pharmacy must apply for a license from the board and submit the required fee for each separate location.

~~(3) The board shall grant a license to operate a limited service pharmacy to qualified applicants. A licensed family planning clinic may operate satellite locations under the same license if identified on the application.~~

(4) and (5) remain the same but are renumbered (3) and (4).

~~(6)~~ (5) A limited service pharmacy dispensing ~~legend~~ prescription drugs other than factory, prepackaged contraceptives must disclose the name, address, telephone number, and title of the designated ~~person in charge~~ person-in-charge of the limited service pharmacy.

(a) The ~~person in charge~~ person-in-charge is responsible for the limited service pharmacy's compliance with all applicable state and federal statutes and rules.

(b) A ~~person in charge~~ person-in-charge may be responsible for multiple sites.

~~(7)~~ (6) The board may annually inspect limited service pharmacies~~, including any satellite locations~~. The board may inspect more often for cause. Such inspections must include assurance that the limited service pharmacy provides adequate:

(a) through (e) remain the same.

~~(8)~~ (7) Nothing in this rule is meant to limit or restrict the authority of a registered nurse employed by a family planning clinic, operating under contract with ~~DPHHS~~ the state, from dispensing factory, prepackaged contraceptives as authorized by 37-2-104, 37-7-103, or 50-31-307, MCA.

~~(9)~~ (8) A registered nurse or provider with prescriptive authority, employed by a family planning clinic operating with ~~DPHHS~~ the state, may dispense ~~oral antibiotics~~ medications used to treat ~~Chlamydia~~ sexually transmitted diseases, including but not limited to conditions listed in 50-16-1004 and 50-18-101, MCA, ~~to a patient diagnosed with Chlamydia~~ and to a sexual contact or partner of a patient diagnosed with ~~Chlamydia~~ a sexually transmitted disease. All appropriate records shall be maintained on-site.

(9) The ~~antibiotics~~ medications dispensed must:

(a) through (c) remain the same.

AUTH: 37-7-201, MCA
IMP: 37-7-201, 37-7-321, MCA

REASON: The board is amending this rule to standardize language, and to address questions staff have received from numerous licensees regarding which facilities require licenses and for clarity with the inspection process. After consultation with the Department of Public Health and Human Services, the board also is including all sexually transmitted infections and updating language to better address public health efforts.

24.174.831 PRESCRIPTION REQUIREMENTS (1) Prescriptions ~~[or drug orders]~~ shall include, but not be limited to:

(a) through (h) remain the same.

(i) number of refills authorized.

(2) A prescription and any refills for a non-controlled drug, device, or biologic are valid for one year from date of issuance.

(3) Prescriptions shall comply with all federal DEA requirements for prescriptions, dispensing, and refills of controlled substance in Schedules II, III, IV, and V, pursuant to 21 CFR 1306.

~~(i)~~ (4) ~~if~~ If the prescription is written, it must contain the prescriber's hand-written signature ~~and~~ the name of the prescriber stamped, typed, printed, or clearly handwritten in addition to the signature, must be tamper-resistant, and contain:~~;~~

~~(ii) if the prescription is written, it must be tamper-resistant and contain all of the following characteristics:~~

(A) through (C) remain the same but are renumbered (a) through (c).

~~(i) number of refills authorized;~~

~~(i) when the refill designation on the prescription is prn or Pro re nata, such designation, unless otherwise limited, means a refill for one year;~~

~~(ii) if a prescription is for a controlled substance in Schedules III, IV, or V, refill five times in the six months from the date of issuance;~~

~~(iii) if a prescription is for a noncontrolled drug, device, or biological, refill for 12 months from the date of issuance;~~

~~(iv) controlled substances in Schedule II cannot be refilled and a refill designation for a controlled substance in Schedule II has no meaning.~~

~~(j)~~ (5) ~~if~~ If the prescription is for a controlled substance, all state and federal requirements must be met, and the following additional information is required to be on the prescription:

(i) and (ii) remain the same but are renumbered (a) and (b).

(iii) prescriber's ~~Drug Enforcement Administration (DEA)~~ DEA registration number.

(2) and (3) remain the same but are renumbered (6) and (7).

~~(4) "Chart order" means a lawful order entered on the chart or a medical record of a patient or resident of a facility by a practitioner, or his or her designated agent, for a drug or device and shall be considered a prescription.~~

(8) Prescription records may be electronically stored and maintained if they remain legible and are in a readily retrievable format, and if federal law does not require them to be kept in a hard copy format, pursuant to DEA requirements in 21 CFR 1304.06.

AUTH: 37-7-201, MCA
IMP: 37-7-201, 37-7-505, MCA

REASON: The board is striking definitions from this rule, as necessary definitions have been moved to ARM 24.174.301. The board is further updating references to DEA requirements and striking provisions made unnecessary with DEA requirements. The board is adding (8) to clarify use of technology, to better accommodate receipt and storage of electronic prescriptions, and to reduce burden in pharmacies and other facilities.

24.174.832 LABELING FOR PRESCRIPTIONS (1) remains the same.

(2) The prescription label must be securely attached to the outside of the container in which the prescription is dispensed, with the exception of medical oxygen.

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

REASON: The board is updating this rule to reflect limitations on medical oxygen canisters and current practice.

24.174.833 RECORDS OF DISPENSING, PURCHASES, AND DISTRIBUTION (1) Records of dispensing for original and refill prescriptions are to

be made and kept by pharmacies for at least two years and shall include, but not be limited to:

(a) and (b) remain the same.

(c) ~~serial number~~ prescription number ~~[~~or equivalent if an institution~~]~~;

(d) and (e) remain the same.

(f) records of refills to date; and

(g) if the pharmacy is distributing to another licensee through wholesale distribution activities, the invoice number and invoice, and, pursuant to 21 CFR 205.50, retain distribution records for three years.

(2) All records must be available for printing and available for inspection by the board.

~~(Note: Information presented in brackets [ ] represents institutional pharmacy requirements.)~~

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

REASON: The board is amending this rule to include purchasing and dispensing records to address questions from licensees. The board is also removing outdated terminology and to align with record keeping requirements from FDA for pharmacies that conduct wholesale activity.

24.174.835 TRANSFER OF PRESCRIPTIONS (1) The transfer of prescription information for the purpose of dispensing is permissible between pharmacies subject to DEA regulations and the following requirements:

(a) the transfer is communicated directly between two licensed pharmacists/interns, or is faxed or electronically transmitted by a pharmacy technician under the direct supervision of a pharmacist; ~~and~~

(b) a retrievable audit trail, including the date of transfer and initials or code of the transferring parties, is maintained for a period of two years~~.~~; and

(c) the transfer of pertinent and necessary patient records to another licensed pharmacy, when requested by the patient or the patient's legally designated representative, is completed in a timeline that meets patient safety and health needs, subject to the pharmacist's professional judgment.

(2) The transferring pharmacy shall:

(a) render the prescription void; and

(b) enter the name, address, and DEA number if required of the receiving pharmacy into the database of the transferring pharmacy~~;~~.

~~(c) inform the receiving pharmacy of:~~

~~(i) the date on which the prescription was written;~~

~~(ii) the original number of refills;~~

~~(iii) the number of refills or quantity remaining; and~~

~~(iv) the date of the most recent refill.~~

(3) The receiving pharmacy shall maintain documentation including:

(a) through (f) remain the same.

(g) a ~~nonfading hard copy~~ record of each prescription ~~drug order~~ transferred.

(4) ~~Pharmacies accessing a common or shared electronic file or database used to maintain required dispensing information are not required to transfer prescription drug orders or information for dispensing purposes between or among pharmacies participating in the common or shared prescription file, provided, however, that any such common or shared file shall contain complete records of each prescription drug order and refill dispensed. A hard copy record of each prescription drug order accessed for purposes of refilling shall be generated if necessary and maintained at the refilling pharmacy. An easily retrievable audit trail which documents the location of each filling must be maintained and provisions must be made to assure that the number of authorized refills is not exceeded.~~ Two or more pharmacies sharing common electronic files to maintain dispensing information are not required to transfer prescription information between these pharmacies, provided all common electronic files maintain complete and accurate records of each prescription and refill dispensed, and the total number of refills authorized is not exceeded.

~~(a) Any pharmacy which establishes an electronic file for prescription records, which is shared with or accessible to other pharmacies, shall post in a place conspicuous to and readily readable by prescription drug consumers a notice in substantially the following form:~~

~~"NOTICE TO CONSUMERS:~~

~~This pharmacy maintains its prescription information in an electronic file which is shared by or accessible to the following pharmacies: (list names of all pharmacies which share the prescription information).~~

~~By offering this service, your prescriptions may also be refilled at the above locations. If for any reason you do not want your prescriptions to be maintained this way, please notify the pharmacist-in-charge."~~

~~(b)~~ (a) ~~Whenever a consumer objects to their prescription records being made accessible to other pharmacies through the use of electronic prescription files, it is the duty of the pharmacy to assure that the consumer's records are not shared with or made accessible to another pharmacy except as provided in this rule.~~ Pharmacies sharing common electronic files shall have policies and procedures in place for handling patient exceptions.

(5) In an emergency, a pharmacy may transfer original prescription ~~drug order~~ information for a noncontrolled substance to a second pharmacy for the purpose of dispensing up to a seven-day supply, without voiding the original prescription ~~drug order~~.

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

REASON: The board is amending this rule to include a reference to technicians faxing or electronically transmitting prescription transfers to address questions received by staff, to align with current practice, and to comply with DEA requirements. The board is further amending this rule to clarify that pharmacies are expected to transfer records in a timeline that meets patient safety and health needs, and to address questions received regarding ARM 24.174.2301(1)(t). The board is removing duplicative language and standardizing language with ARM 24.174.840.

Finally, the board is removing the requirement of sign posting with specific language as unnecessary to state in rule after determining electronic record keeping is a common element in pharmacy practice and patients may address concerns with pharmacy staff.

24.174.836 EMERGENCY PRESCRIPTION REFILLS (1) remains the same.

(2) If a prescription is not refillable, a pharmacist dispensing an emergency refill:

(a) may exercise professional judgment to dispense a minimum sufficient quantity until authorization can be obtained from a prescriber~~:~~;

~~(i) for drugs which must be dispensed in their original containers, the pharmacist may dispense the smallest trade size available;~~

(b) may not dispense a controlled substance prescription medication listed in Schedule II through Schedule V;

(c) and (d) remain the same.

(e) must comply with all applicable record-keeping requirements.

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

REASON: The board is amending this rule to align with current practices after reports from board inspectors. The board is striking (2)(a)(i) as unnecessary, given the requirement in (2)(a) that the pharmacist exercise professional judgment as to the quantity needed.

24.174.840 ELECTRONIC TRANSMISSION OF PRESCRIPTIONS ~~BY ELECTRONIC MEANS~~ ~~(1) A pharmacist may dispense directly any legend drug, which requires a prescription to dispense (except as provided in (2) and (3) below for Schedule II, III, IV, and V, controlled substances) pursuant to either a written prescription signed by a practitioner or a prescription transmitted by the practitioner or the practitioner's agent to the pharmacy by electronic means, or pursuant to an oral prescription made by an individual practitioner and promptly reduced to hardcopy by the pharmacist, containing all information required. The prescription shall be maintained in accordance with ARM 24.174.512.~~

~~(2) A pharmacist may dispense directly a controlled substance in Schedule II, which is a prescription drug as determined by the Federal Food, Drug, and Cosmetic Act (FD&C Act), pursuant to a written prescription signed by the practitioner. In addition, a prescription for a Schedule II controlled substance may be transmitted by the practitioner or the practitioner's agent to a pharmacy by electronic means, provided the original written, signed prescription is presented to the pharmacist for review prior to the actual dispensing of the controlled substance or by electronic means that meet all of the federal guidelines for controlled substances that are electronically prescribed. The original prescription shall be maintained in accordance with ARM 24.174.512.~~

~~(a) A signed prescription for a Schedule II narcotic substance to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous, or intraspinal infusion may be transmitted by the~~

~~practitioner or the practitioner's agent to the pharmacy by electronic means. The electronic transmission serves as the original written prescription for the purpose of this rule and it shall be maintained in accordance with ARM 24.174.512.~~

~~(b) A signed prescription for a Schedule II substance for a resident of a long-term care facility may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by electronic means. The electronic transmission serves as the original written prescription for purposes of this rule and it shall be maintained in accordance with ARM 24.174.512.~~

~~(c) A signed prescription for a Schedule II substance for a patient enrolled in a hospice care program, certified and/or paid for by Medicare under Title XVIII of the Social Security Act, or a hospice program which is licensed by the state of Montana, may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by electronic means. The practitioner or the practitioner's agent shall note on the prescription that the patient is a hospice patient. The electronic transmission serves as the original written prescription for purposes of this rule and it shall be maintained in accordance with ARM 24.174.512.~~

~~(3) A pharmacist may dispense directly a controlled substance listed in Schedule III, IV, or V, which is a prescription drug as determined under the FD&C Act, only pursuant to either a written prescription signed by a practitioner or a copy of a written, signed prescription transmitted by the practitioner or the practitioner's agent to the pharmacy by electronic means, or pursuant to an oral prescription made by an individual practitioner and promptly reduced to hardcopy by the pharmacist, containing all information required or by electronic means that meet all of the federal guidelines for controlled substances that are electronically prescribed. The prescription shall be maintained in accordance with ARM 24.174.512.~~

~~(4) Prescriptions may be transmitted electronically directly from an authorized prescriber or his/her authorized agent to the pharmacy of the patient's choice without alteration by any other party, providing the following requirements are met:~~

~~(a) Both prescriber and pharmacist must have a secure (encrypted or encoded) system for electronic transmission from computer to computer that ensures patient confidentiality;~~

~~(b) The receiving electronic device shall be located within the pharmacy department to ensure security and confidentiality;~~

~~(c) An electronically transmitted prescription shall contain all information required by state and federal law, including the date and time of transmission, the prescriber's telephone number for verbal confirmation, and the name of the prescriber's agent transmitting the order, if other than the prescriber;~~

~~(d) The prescriber's electronic signature or other secure (encrypted or encoded) method of validation shall be provided with the electronically transmitted order. Faxed prescription orders shall contain the identifying number of the sending fax machine;~~

~~(e) A printed, nonfading copy of an electronically transcribed prescription will be maintained in the pharmacy for a period of two years;~~

~~(f) The prescription shall be marked "electronically transmitted prescription" or be otherwise identified for easy retrieval;~~

~~(g) An electronically transmitted prescription shall be transmitted only to the pharmacy of the patient's choice;~~

~~(h) The pharmacist is responsible for assuring the validity of the electronically transmitted prescription;~~

~~(i) A pharmacist or pharmacy shall not enter into any agreement to provide or receive a computer or computer modem, personal digital assistant, facsimile machine, or any other electronic device which would adversely affect a patient's freedom to select the pharmacy of the patient's choice; and~~

~~(j) A pharmacist or pharmacy shall not provide a computer or computer modem, personal digital assistant, facsimile machine, or any other electronic device to a prescriber or healthcare facility for the purpose of providing an incentive to refer patients to a particular pharmacy.~~

(1) Unless otherwise prohibited by law, an electronic prescription may be transmitted from the prescriber or an authorized agent directly to the dispensing pharmacy and must contain all information required by state and federal law.

(2) Electronic prescriptions for Schedules II through V controlled substances shall comply with DEA requirements, as outlined in 21 CFR 1311.120, and any security or other requirements of federal law.

(3) All electronic prescriptions shall comply with all security requirements of state and federal law related to privacy of protected health information.

(4) A pharmacy receiving an electronic prescription shall maintain the prescription record in accordance with ARM 24.174.833.

(5) An electronic prescription shall be transmitted only to the pharmacy of the patient's choice.

~~(5)~~ (6) Computer-generated, electronically signed prescriptions for controlled substances that are handed directly to a patient or to a patient's agent ~~must be authenticated by the prescriber with the prescription hand-signed, with~~, or faxed to a pharmacy, must contain the actual signature of the prescriber, and comply with prescription requirements outlined in ARM 24.174.831 if a hard copy prescription. Computer-generated, electronically signed prescriptions for noncontrolled substances do not require an additional wet signature.

~~(6) Two or more pharmacies sharing common electronic files to maintain dispensing information are not required to transfer prescription information between these pharmacies, providing all common electronic files maintain complete and accurate records of each prescription and refill dispensed, and the total number of refills authorized is not exceeded.~~

~~(a) Any pharmacy sharing a common electronic file for prescription records shall post the following notice in readily readable form in a conspicuous place within the pharmacy:~~

~~"This pharmacy maintains its prescription information in a secure electronic file that is shared by the following pharmacies: (list names of pharmacies which share the prescription information). If refills are authorized, your prescriptions may be refilled at any of the above locations. If you do not want your prescriptions to be maintained in this way, please notify the pharmacist at the time of filling."~~

~~(b) Pharmacies sharing common electronic files will have policies and procedures in place for handling these exceptions.~~

AUTH: 37-7-201, 50-32-103, MCA
IMP: 37-1-101, 37-7-102, 37-7-201, 50-32-208, MCA

REASON: The board is amending this rule to simplify and more clearly explain electronic prescription requirements and correlate with the definition added to ARM 24.174.301. The board is further striking (6), regarding sharing common electronic files, as it is now included in ARM 24.174.835. Also, the board is adding reference to compliance with ARM 24.174.831, if the electronically generated prescription is printed and presented as a hard copy prescription for a controlled substance.

24.174.901 PATIENT RECORDS AND DRUG UTILIZATION REVIEW (1) A patient record system shall be maintained by all pharmacies for patients for whom prescriptions ~~drug orders~~ are dispensed. The patient record system shall provide for the immediate retrieval of information necessary for the dispensing pharmacist to identify previously dispensed drugs at the time a prescription ~~drug order~~ is presented for dispensing. The pharmacist or pharmacy technician ~~under a board-approved utilization plan,~~ shall make a reasonable effort to obtain, record, and maintain the following information:

(a) full name of the patient ~~for whom the drug is intended~~;

(b) through (d) remain the same.

(e) known allergies or drug intolerances;

(f) chronic conditions;

(g) other prescription or non-prescription medications; and

(e) remains the same but is renumbered (h).

~~(2) The pharmacist or pharmacy technician under a board-approved utilization plan, shall make a reasonable effort to obtain from the patient or the patient's agent and shall record any known allergies, drug reactions, idiosyncrasies, and chronic conditions or disease status of the patient and the identity of any other drugs, including over-the-counter drugs, or devices currently being used by the patient which may relate to prospective drug review.~~

(2) A pharmacist shall review the patient record and complete a drug utilization review as defined in 37-7-101, MCA. Upon recognizing any potential therapeutic problems, the pharmacist shall take appropriate steps to avoid or resolve the problem which shall, if necessary, include consultation with the prescriber.

(3) A patient record shall be maintained for a period of not less than ~~three~~ two years from the date of the last entry in the profile record. This record may be a hard copy or a computerized form.

AUTH: 37-7-201, MCA
IMP: 37-7-406, MCA

REASON: The board is amending this rule to strike unnecessary language and to incorporate relevant provisions from ARM 24.174.902. The board is further updating the patient retention record requirements to two years to align with other provisions.

24.174.903 PATIENT COUNSELING (1) Upon receipt of a new, refill, or transfer prescription ~~drug order or refill prescription drug order~~ if deemed necessary by the pharmacist, ~~and following a review of the patient's record, a pharmacist~~ each patient or caregiver, agent, or representative of the patient shall be offered

~~personally offer~~ the opportunity to discuss matters which will enhance or optimize drug therapy with ~~each patient or caregiver of such patient~~ the pharmacist. The discussion shall be in person, whenever practicable, or by telephone, and shall include appropriate elements of patient counseling. ~~Such elements may include the following:~~ Pharmacy personnel may make the offer to counsel, but the pharmacist must personally conduct the counseling.

~~(a) the name and description of the drug;~~

~~(b) the dosage form, dose, route of administration, and duration of drug therapy;~~

~~(c) intended use of the drug and expected action;~~

~~(d) special directions and precautions for preparation, administration, and use by the patient;~~

~~(e) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;~~

~~(f) techniques for self-monitoring drug therapy;~~

~~(g) proper storage;~~

~~(h) prescription refill information;~~

~~(i) action to be taken in the event of a missed dose; and~~

~~(j) pharmacist comments relevant to the individual's drug therapy, including any other information peculiar to the specific patient or drug.~~

(2) remains the same.

(3) Alternative forms of patient information shall be used to supplement patient counseling when appropriate and when required. Examples include written information leaflets, pictogram labels, video programs, QR codes, etc. The pharmacy shall provide medication guides or confirm patient access to the medication guides and/or patient package inserts, comply with risk evaluation and mitigation strategies, and/or other labeling requirements as required by the U.S. Food and Drug Administration.

(4) remains the same.

(5) A pharmacist shall not be required to counsel a patient or caregiver when the patient or caregiver refuses ~~such~~ consultation. A record of the refusal shall be maintained ~~by the pharmacist~~.

AUTH: 37-7-201, MCA
IMP: 37-7-406, MCA

REASON: The board is amending this rule to strike unnecessary details which are taught in pharmacy school and are known elements of counseling and recognized as standard of pharmacy practice. The board is including QR codes in (3) to address questions received from licensees, is adding reference to FDA labeling/dispensing requirements in (3), and is amending (5) to provide flexibility in workflow and pharmacy staff operations.

24.174.1412 ADDITIONS, DELETIONS, AND RESCHEDULING OF DANGEROUS DRUGS (1) In addition to those dangerous drugs scheduled in 50-32-222, 50-32-224, 50-32-226, 50-32-229, and 50-32-232, MCA, the board adds the

following to dangerous drug schedules after considering federal regulations and/or the criteria enumerated in Title 50, chapter 32, part 2, MCA:

(a) remains the same.

(b) Schedule II:

(i) ~~norfentanyl~~ none at this time;

(c) remains the same.

(d) Schedule IV:

~~(i) brexanolone, allopregnanolone~~ none at this time;

~~(ii) soriamfetol;~~

~~(iii) lemborexant;~~

(e) Schedule V:

~~(i) lasmiditan;~~ none at this time.

~~(ii) cenobamate.~~

(2) The board deletes the following dangerous drugs from the schedules in 50-32-222, 50-32-224, 50-32-226, 50-32-229, and 50-32-232, MCA, after considering federal regulations and/or the criteria enumerated in Title 50, chapter 32, part 2, MCA:

(a) remains the same.

(b) Schedule II:

(i) ~~6β-naltrexol~~ none at this time;

(c) and (d) remain the same.

(e) Schedule V:

~~(i) approved cannabidiol drugs. A drug product in finished dosage formulation that has been approved by the United States Food and Drug Administration that contains cannabidiol, also known as (2-[1R-3-methyl-6R-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol), derived from cannabis and no more than 0.1% (w/w) residual tetrahydrocannabinols, and as authorized by the Agriculture Improvement Act of 2018 (P.L. 115-334)~~ none at this time.

(3) remains the same.

AUTH: 50-32-103, 50-32-203, MCA

IMP: 50-32-103, 50-32-202, 50-32-203, 50-32-209, 50-32-222, 50-32-223, 50-32-224, 50-32-225, 50-32-226, 50-32-228, 50-32-229, 50-32-231, 50-32-232, MCA

REASON: The board is amending this rule to remove duplicate language that is now listed in statute pursuant to 2023 Senate Bill 67.

24.174.1501 PARTICIPATION AND REGISTRATION (1) remains the same.

~~(2) A pharmacy or facility may withdraw from participation in the cancer drug repository program at any time, upon notification to the board. A notice to withdraw shall be in writing.~~

(3) remains the same but is renumbered (2).

~~(4) Cancer drugs may be donated to a pharmacy or facility.~~

~~(5)~~ (3) ~~Participation in the~~ The program is voluntary, and any pharmacy or facility must notify the board of their interest in participating in the program.

(6) remains the same but is renumbered (4).

(5) Any person or entity (donor) may donate cancer drugs to the program. The donor must contact a pharmacy or facility to obtain a form on which the donor must specify the drug(s) to be donated. The board will supply the form to be used which will include the provisions of 37-7-1405, MCA, and the:

(a) name and quantity of the drug; and

(b) name of the person the drug was originally prescribed, their relationship with the donor, the signature of the donor, and the date the form was signed.

(6) The board may inspect a pharmacy or facility participating in the program for compliance with the storage and record-keeping requirements. The board may terminate participation in the program for noncompliance.

(7) The board shall establish and maintain a list of any pharmacy or facility participating in the program by issuing an endorsement on the license at no cost. The endorsement application information must include the entity's name, address, telephone number, and if it is a practitioner's office, pharmacy, clinic, or hospital, in compliance with 37-7-1403, MCA. The pharmacy or facility must notify the board of any changes to their registration information, including when they stop participating in the program.

(8) The board will make the pharmacy or facility registry information available to any person or entity wishing to donate cancer drugs to the program, and will make the information available on the board webpage or by contacting the board office.

AUTH: 37-7-1401, MCA
IMP: 37-7-1401, 37-7-1403, 37-7-1405, MCA

REASON: The board is combining ARM 24.174.1501, 24.174.1502, 24.174.1508, 24.174.1509, and 24.174.1510 for standardization purposes and to simplify listing of requirements.

24.174.1503 ACCEPTABLE AND NONACCEPTABLE CANCER DRUGS

(1) The following categories of cancer drugs are acceptable for dispensing or distribution under the program, if in compliance with 37-7-1404, MCA, the cancer drug:

(a) ~~a cancer drug that~~ is in its original, unopened, sealed, and tamper-evident packaging;

(b) ~~a cancer drug~~ is packaged in single unit doses if the outside packaging is opened, but the single unit dose packaging is unopened; and

~~(c) a cancer drug that does not require refrigeration, freezing, or other special temperature requirements beyond controlled room temperature; and~~

~~(d)~~ (c) ~~an injectable cancer drug if it~~ does not have temperature or storage requirements other than controlled room temperature.

(2) remains the same.

(3) The following categories of cancer drugs are not acceptable for dispensing or distribution under the program, because the effectiveness and safety of the cancer drugs cannot be ensured or is otherwise prohibited if the cancer drugs:

(a) are adulterated or misbranded;

(b) do not comply with the requirements in (1);

(c) are controlled substances; and

(d) have expired before dispensing to the patient.

AUTH: 37-7-1401, MCA
IMP: 37-7-1401, 37-7-1404, 37-7-1405, MCA

REASON: The board is consolidating rules ARM 24.174.1503 and 24.174.1504 for clarity and simplification in the listing of acceptable and nonacceptable cancer drugs for the donation program, and added a reference to 37-7-1404, MCA.

24.174.1505 DISPENSING AND DISTRIBUTION OF CANCER DRUGS

(1) remains the same.

~~(2) A pharmacy or facility must inspect all such drugs prior to dispensing or distributing to determine if they are adulterated, misbranded, or expired.~~

~~(3) The following are authorized to dispense drugs:~~

~~(a) practitioners with prescriptive authority; and~~

~~(b) licensed pharmacists.~~

(4) remains the same but is renumbered (2).

(a) dispensed to ~~an ultimate user~~ ~~of the cancer drug~~ a cancer drug patient or to a patient's agent or caregiver; or

(b) remains the same.

(5) remains the same but is renumbered (3).

~~(6)~~ (4) Patients for whom cancer drugs are dispensed under the program must be notified by the prescribing practitioner or dispensing pharmacy that the cancer drugs they received were originally dispensed to another patient and were returned for redispensing through the program.

AUTH: 37-7-1401, MCA
IMP: 37-7-1401, 37-7-1405, MCA

REASON: The board is striking (2) as redundant. Pharmacies may not dispense or distribute adulterated, misbranded, or expired drugs generally, so it is unnecessary to restate here. The board is also adding clarification for dispensing to a patient's agent or caregiver.

24.174.1506 STORAGE AND RECORD-KEEPING REQUIREMENTS

(1) The pharmacy or facility that receives donated cancer drugs for dispensing or distribution must:

(a) ~~provide equipment for~~ ensure the proper and secure storage of cancer drugs donated to the program ~~at controlled room temperature~~; and

(b) maintain the inventory of donated cancer drugs separate from all other drug inventory of the pharmacy or facility~~; and~~

~~(c) establish a secure location for the storage of the donated cancer drugs~~.

(2) A pharmacy or facility must maintain a perpetual inventory log book of all donated cancer drugs received, dispensed, or distributed that must include the information outlined in 37-7-1405, MCA, including:

(a) name, quantity, expiration date, dosage form, and lot number;

(b) name of pharmacy or facility;

(c) name of person or entity who donated the cancer drug;

(d) name of the person to whom the cancer drug was dispensed and date dispensed;

(e) name of the prescribing practitioner who wrote the prescription for the cancer drug to be dispensed under the program;

(f) name of the pharmacy or facility which the cancer drug was distributed and date distributed;

(g) date of destruction of the expired cancer drug; and

(h) the amount of the handling fee charged, if any.

AUTH: 37-7-1401, MCA
IMP: 37-7-1401, 37-7-1404, 37-7-1405, MCA

REASON: The board is combining ARM 24.174.1506 and 24.174.507 for clarity and to simplify listing of requirements as outlined in 37-7-1405, MCA.

24.174.1603 PROTOCOL FOR SELF-REPORTING TO A ~~BOARD-ESTABLISHED MEDICAL~~ PROFESSIONAL ASSISTANCE PROGRAM (1) If a licensee or license applicant chooses to self-report to the ~~board-established medical~~ assistance program, and the ~~medical assistance~~ program has determined that the licensee or license applicant needs assistance or supervision, the licensee or license applicant shall be required to:

(a) and (b) remain the same.

(2) Self-reporting by a licensee or license applicant may still result in disciplinary action by the board if:

(a) the medical assistance program determines that the self-reporting licensee or license applicant poses a danger to themselves or to the public;

(b) the licensee or license applicant is noncompliant with a contractual agreement with the medical assistance program;

(c) the licensee or license applicant has not completed evaluation, treatment, or aftercare monitoring as recommended by the medical assistance program; or

(d) remains the same.

(3) ~~The medical assistance program shall notify the board, disclose the identity of the licensee involved, and provide all facts and documentation to the board whenever:~~ The program shall notify and disclose to the board the identity of a new license applicant who is determined by the program to have significant impairment issues.

~~(a) the licensee:~~

~~(i) has committed an act described in ARM 24.174.2301;~~

~~(ii) is noncompliant with a recommendation of the medical assistance program for evaluation, treatment, or aftercare monitoring contract; or~~

~~(iii) is the subject of credible allegations that the licensee has put a patient or the public at risk or harm; or~~

~~(b) the screening panel otherwise determines disciplinary action is warranted.~~

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

REASON: The board is amending this rule to repeal unnecessary sections that repeat statute, and to include license applicants to align with current practices and other boards.

24.174.1604 RESPONSIBILITIES OF ~~MEDICAL~~ PROFESSIONAL ASSISTANCE PROGRAM (1) The ~~medical~~ professional assistance program established by the board as set forth in 37-7-201, MCA, shall ~~fulfill the terms of its contract with the board, which will include, but not be limited to, the following~~:

(a) ~~providing~~ provide two tracks for assistance of licensees:

(i) and (ii) remain the same.

(b) ~~providing~~ provide recommendations to licensees or license applicants for appropriate evaluation and treatment facilities;

(c) ~~recommending to the board~~ recommend terms and conditions of treatment, rehabilitation, and monitoring of licensees or license applicants known to the board; and

(d) remains the same.

(e) report to the board the discharge of a participant, and if applicable, provide to the board:

(i) verification of the participant's satisfactory completion of monitoring and program requirements as appropriate for public safety;

(ii) verification of the participant's completion of board final order terms and conditions with recommendation of the program for discharge; and/or

(iii) notification that the participant is transferring to another jurisdiction.

(2) and (3) remain the same.

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

REASON: The board is amending this rule to include the responsibilities of the assistance program to manage intake, monitoring, and discharge, as well as the reporting to the board requirements. These requirements were previously contained in multiple rules, so the board is combining for ease of understanding and repealing the extraneous rules.

24.174.1605 PROTOCOL FOR DISCIPLINARY TRACK (1) All licensees who participate in the ~~medical~~ assistance program under the disciplinary track shall be reported to the board by name.

(2) A licensee or license applicant is placed in the disciplinary track by one or more of the following:

(a) remains the same.

(b) as a result of a sanction imposed by a board final order~~;~~.

~~(c) as a result of noncompliance with the licensee's contractual agreement with the program; or~~

~~(d) pursuant to an agreement between the licensee and the screening panel or the full board upon licensure.~~

(3) The program shall also report licensees who have discharged from the

program.

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

REASON: The board is striking (2)(c) and (d) as a requirement to participate in the disciplinary track is a sanction, which can only be imposed after a board final order either as a disciplinary action or as a licensing decision. The board is further amending the rule to include discharged participants.

24.174.1606 PROTOCOL FOR NONDISCIPLINARY TRACK (1) A licensee or license applicant who participates in the medical assistance program under the nondisciplinary track shall be reported to the board by participant number.

(2) and (3) remain the same.

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

REASON: The board is adding license applicants for standardization with other boards and to reflect current practice.

24.174.1702 REQUIREMENTS FOR SUBMITTING PRESCRIPTION REGISTRY INFORMATION TO THE BOARD ~~INFORMATION REQUIRED FOR SUBMISSION~~ (1) All prescription information for controlled substances shall be submitted to the board pursuant to this subchapter.

~~(1)~~ (2) Each ~~entity~~ facility licensed by the board as a community pharmacy or as an out-of-state mail service pharmacy that dispenses to patients in Montana shall provide ~~the following~~ controlled substances dispensing information or zero report by no later than the close of the next business day to the board~~:~~ as outlined in the Montana Prescription Drug Registry (MPDR) Data Submission Guide available on the Board of Pharmacy's MPDR website at www.mpdr.mt.gov.

(3) Each facility licensed by the board as an institutional pharmacy shall provide controlled substance dispensing information if they dispense controlled substances in an outpatient, discharge, starter packet, or other related capacity in which the controlled substance(s) leaves their premises. Institutional pharmacies are not required to submit zero reports.

(4) Controlled substance dispensing information reported to the MPDR must include the following:

(a) through (h) remain the same.

(i) ~~prescription~~ number assigned to the prescription ~~order~~; and

(j) remains the same.

~~(2) Each entity licensed by the board as an institutional pharmacy shall comply with the reporting requirements listed in this rule if they dispense controlled substances in an outpatient, discharge, starter packet, or other related capacity in which the controlled substance(s) leaves their premises. Institutional pharmacies are not required to submit zero reports.~~

(5) All prescription information submitted to the board must be transmitted in the format specified by the American Society for Automation in Pharmacy (ASAP), version 4.2A, dated 2016, at a minimum, which is adopted and incorporated by reference. ASAP 4.2A specifications are available in the MPDR Data Submission Guide available at the board's MPDR website at www.mpdr.mt.gov.

(a) The acceptable methods of electronic reporting are Secure File Transfer Protocol (SFTP), file upload, and manual data entry of prescription information via the secure web-based interface provided by the system vendor maintained by the board.

(6) In the event that a pharmacy cannot submit the required information as described in this rule, the pharmacy must timely notify the board on or before the date the submission is due. Upon notification, the board may grant an extension, at their discretion.

(7) It is the responsibility of the submitting pharmacy to address any errors or questions about information that the pharmacy has submitted to the prescription drug registry and resubmit corrected data within seven days after the date of notification of the error.

(8) A pharmacy that does not dispense controlled substances may notify the board by submitting an appropriate board-approved form attesting that the pharmacy does not dispense controlled substances to Montana patients. A pharmacy is not exempt from reporting requirements until it receives approval from the board.

(a) The board-approved form submitted by a pharmacy that does not dispense controlled substances shall be maintained on file with the board.

(b) A pharmacy's exempt status does not expire unless the pharmacy is issued a new license number or the pharmacy dispenses a controlled substance.

AUTH: 37-7-1512, MCA
IMP: 37-7-1502, 37-7-1503, 37-7-1512, 37-7-1513, MCA,

REASON: The board is combining ARM 24.174.1702, 24.174.1703, and 24.174.1704 to simplify and streamline the rules, and updating language to reflect current practice and questions from licensees.

24.174.1706 REGISTRY INFORMATION REVIEW AND UNSOLICITED PATIENT PROFILES (1) remains the same.

(2) ~~In instances of possible misuse or diversion, the executive director will promptly report by telephone, e-mail, or postal mail the patient's profile information to practitioners and pharmacists who have provided care to that patient~~ Registered prescribers and pharmacists will be notified electronically, through vendor functionality, of instances of possible misuse or diversion for patients under their care.

(3) remains the same.

AUTH: 37-7-1512, MCA
IMP: 37-7-1502, 37-7-1504, MCA

REASON: The board is amending this rule to reflect a new vendor's notifications operating differently. Prescribers get notified directly when they log in and can see a queue of alerts for patients that fill a prescription from that prescriber; pharmacists are notified if an alteration is included in the search result for a specific patient.

24.174.1708 ACCESS TO PRESCRIPTION DRUG REGISTRY INFORMATION (1) The following persons may have direct online access to prescription drug registry information:

(a) licensed practitioners having authority to prescribe ~~controlled substances~~ prescription drugs, or that practitioner's authorized agent, for the purpose of providing medical and/or pharmaceutical care for their patients, or for patients referred for medical care and/or pharmaceutical care;

(b) licensed pharmacists authorized to dispense ~~controlled substances~~ prescription drugs, or that pharmacist's ~~authorize~~ authorized agent, for the purpose of providing pharmaceutical care for their patients or for patients referred for care;

(c) remains the same.

(d) board staff~~, including executive director, inspectors, and program manager~~ for administrative and compliance purposes; and

(e) remains the same.

(2) To access registry information, each user must first:

~~(a) successfully complete the board's educational program~~;

~~(b)~~ complete the registration form, terms of use or equivalent agreement, and confidentiality agreement provided by the board~~;~~. The board will provide educational material about the MPDR program online at www.mpdr.mt.gov.

~~(c) complete a written agreement assuring that the user's access and use of the prescription drug registry is limited to that authorized by law;~~

(3) Access for users is restricted:

~~(i)~~ (a) in the case of a licensed practitioner having authority to prescribe ~~controlled substances~~ prescription drugs, or that practitioner's authorized agent, ~~access is restricted~~ to:

~~(A)~~ (i) the practitioner's own prescribing information; or

~~(B)~~ (ii) prescription records for a patient of the practitioner to whom the practitioner is providing or considering providing medical and/or pharmaceutical care;

~~(ii)~~ (b) in the case of a licensed pharmacist, ~~pharmacy intern, or certified pharmacy technician, access is restricted~~ or that pharmacist's authorized agent, to prescription records for a patient for whom the ~~pharmacy~~ pharmacist is ~~actually~~ providing pharmaceutical care, dispensing, or considering dispensing a prescription;

~~(iii)~~ (c) in the case of a designated representative of the Montana Medicare or Medicaid programs, Tribal Health, Indian Health Service, and Veterans Affairs, ~~access is restricted~~ to prescription records related to a participant in the program;

~~(iv)~~ (d) in the case of authorized representatives of the board, ~~access is restricted~~ to:

~~(A)~~ (i) that necessary to respond to legitimate inquiries; or

~~(B)~~ (ii) that necessary for legitimate inquiries under ARM 24.174.1706;

~~(v)~~ (e) in the case of an authorized vendor or contractor, ~~access is restricted~~ to technical work necessary to establish or maintain the prescription drug registry databank~~; or~~.

~~(vi)~~ (4) For each user ~~in every user's case~~:

~~(A)~~ (a) information accessed from the prescription drug registry must be kept confidential;

~~(B)~~ (b) information accessed from the prescription drug registry must not be disclosed to any unauthorized person; and

~~(C)~~ (c) user account information, login names, and passwords must not be shared with any person, regardless of whether that person is also an authorized user of the prescription drug registry.

~~(3)~~ (5) Prior to granting access to the registry, the board shall verify that the applicant is licensed to prescribe or dispense ~~controlled substances or legend drugs~~ prescription drugs, or in the case of an agency applicant, the board shall verify that the applicant is the designated representative of the Montana Medicare or Medicaid programs, Tribal Health, Indian Health Service, or Veterans Affairs.

(4) remains the same but is renumbered (6).

~~(5)~~ (7) Upon ~~receipt of written~~ notification that an authorized user no longer possesses authority to prescribe, dispense, or represent Medicare or Medicaid programs, Tribal Health, Indian Health Services, Veterans Affairs, or the board, the board shall terminate the user's access to the prescription drug information.

(6) remains the same but is renumbered (8).

(a) ~~completing the form provided by the board and returning the completed form, along with proof of identification and authorization required by the board, to the board's office~~ completing the registration form, terms of use or equivalent agreement, and confidentiality agreement provided by the board and provide appropriate credentialing; or

(b) remains the same.

~~(7)~~ (9) Individual patients may request their own prescription registry information from the board or their provider. If requesting from the board, the ~~requestor~~ requester shall ~~personally appear at the program office and produce a positive photo identification at the time of their request~~ complete and return the form provided by the board. A ~~single~~ copy of the information will be provided at no charge to the individual.

(8) remains the same but is renumbered (10).

AUTH: 37-7-1506, 37-7-1512, MCA
IMP: 37-7-1506, 37-7-1512, MCA

REASON: The board is amending this rule to reflect that the MPDR program is operated by a new vendor, and to align terminology with statutory language.

24.174.1709 REGISTRY INFORMATION RETENTION (1) remains the same.

(2) Pursuant to 37-7-1508, MCA, a government entity or law enforcement agency may request that specific information in the registry, related to an open

investigation, be retained beyond the three-year destruction requirement by submitting a ~~written~~ request to the board ~~on a form provided by the board~~.

AUTH: 37-7-1512, MCA
IMP: 37-7-1508, MCA

24.174.1711 ADVISORY GROUP (1) The board shall establish a prescription drug registry advisory group, to provide information and ~~advice~~ recommendations about the development ~~and~~, operation, enhancement, and clinical application of the prescription drug registry.

~~(2) The advisory group shall consist of, but is not limited to, representatives of:~~

~~(a) Montana boards of pharmacy, medical examiners, nursing, and dentistry;~~

~~(b) Montana pharmacy associations, medical associations, nursing associations, dental associations, and associations that advocate for patients;~~

~~(c) tribal health, Medicaid and Medicare, and public health agencies;~~

~~(d) the Department of Justice; and~~

~~(e) the Montana Legislature.~~

~~(3) The members of the advisory group shall serve at the pleasure of their respective appointing authorities.~~

~~(4) The members of the advisory group shall elect a chair and a vice chair whose duties shall be established by the advisory group.~~

~~(5) The advisory group shall establish policies and procedures necessary to carry out duties.~~

~~(6) The board shall establish a time and a place for regular meetings of the advisory group, which shall meet at least once a year.~~

AUTH: 37-7-1510, 37-7-1512, MCA
IMP: 37-7-1510, MCA

REASON: The board is amending this rule to remove language repeating statute, and to reflect that board staff manages and chairs meetings. The board is not repealing the entire rule as 37-7-1711, MCA requires that the board set rules for the conduct of the advisory group.

24.174.2104 REGISTERED PHARMACIST CONTINUING EDUCATION - REQUIREMENTS (1) through (5) remain the same.

~~(6) The board may randomly audit up to 50 percent of renewed licensees' CE hours.~~

~~(7) Licensees found to be in noncompliance with CE requirements may be subject to administrative suspension.~~

AUTH: 37-1-319, MCA
IMP: 37-1-306, MCA

REASON: The board is striking (6) as duplicative of 37-1-306, MCA, and is moving (7) to NEW RULE I to align with standard administrative suspension procedures within the department.

24.174.2301 UNPROFESSIONAL CONDUCT (1) The board defines "unprofessional conduct" as follows:

(a) through (s) remain the same

(t) failure to transfer pertinent and necessary patient records to another licensed pharmacy, the patient or the patient's representative when requested to do so by the patient or the patient's legally designated representative in a timeline that meets patient safety and health needs;

(u) failure to comply with an agreement the licensee has entered into with the ~~impaired pharmacist~~ assistance program; ~~and~~

(v) failure to follow policies and procedures defined in the practice situation to safeguard patient care~~.~~;

(w) failure to comply with the scope of practice of a clinical pharmacist practitioner and the authority of a collaborative practice agreement, as authorized in 37-7-306, MCA;

(x) failure to submit controlled substance dispensing information to the prescription drug registry, pursuant to 37-7-1503, MCA; and

(y) filling a prescription from a pharmacy-produced copy as a pharmacy-produced copy of a prescription cannot be used to fill or dispense a prescription.

AUTH: 37-1-319, 37-7-201, MCA
IMP: 37-1-316, MCA

REASON: The board is incorporating (w), (x) and (y) after relocating them from other rules, including ARM 24.174.528, 24.174.1705, and 24.174.834. The board is also revising (t) to reflect revisions to ARM 24.174.835.

4. The proposed new rule is as follows:

NEW RULE I ADMINISTRATIVE SUSPENSION (1) The board authorizes the department to:

(a) administratively suspend licenses for deficiencies set forth in 37-1-321(1)(a) though (e), MCA; or

(b) file a complaint pertaining to the deficiencies in (1) that are based on repeated or egregious conduct, or that have co-occurring misconduct allegations that directly implicate public safety and may warrant formal disciplinary action.

(2) An administrative suspension is not a negative, adverse, or disciplinary action under Title 37, MCA, and is not reportable under federal law and regulations implementing the Healthcare Practitioner Databank or the department's licensee lookup and license verification databank.

AUTH: 37-1-131, MCA
IMP: 37-1-321, MCA

5. The rules proposed to be repealed are as follows:

24.174.303 INTERNSHIP PROGRAM DEFINITIONS

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

REASON: The board is repealing this rule after moving the definitions into ARM 24.174.301, as revised, and to align with revisions in Subchapter 6 Internship Requirements.

24.174.402 DANGEROUS DRUG FEE SCHEDULE

AUTH: 37-1-134, 37-7-201, 50-32-103, 50-32-314, MCA
IMP: 37-1-134, 37-7-201, 37-7-321, 50-32-103, 50-32-314, MCA

REASON: The board is repealing this rule after moving the fees into ARM 24.174.401.

24.174.504 INACTIVE LICENSE

AUTH: 37-1-319, 37-7-201, MCA
IMP: 37-1-319, 37-7-201, MCA

REASON: The board is repealing the pharmacist inactive license status after discussing the Board of Nursing's repeal of inactive status in 2017, determining that a license should be active or should not exist, unless the status changes due to a disciplinary action. The board determined inactive status is minimally used and is an administrative burden for licensees and staff. It is also not necessary to keep for purposes of the professional assistance program. The board currently has approximately 50 inactive status licensees. The resulting increase in revenue of approximately $2500 is not significant to the board's overall budget.

24.174.507 MILITARY TRAINING OR EXPERIENCE

AUTH: 37-1-145, MCA
IMP: 37-1-145, MCA

REASON: The board is repealing this rule to reflect military training or experience authority in 37-1-145, MCA, pursuant to 2023 House Bill 583, which outlines specific obligations for the board to accept military experience for granting licensure.

24.174.525 DEFINITIONS

AUTH: 37-7-201, MCA
IMP: 37-7-201, 37-7-306, MCA

REASON: The board is moving the definitions for collaborative practice agreement requirements into ARM 24.174.301 to have one definition rule.

24.174.527 REQUIREMENTS TO MAINTAIN CLINICAL PHARMACIST PRACTITIONER REGISTRATION

AUTH: 37-7-201, MCA
IMP: 37-7-201, 37-7-306, MCA

REASON: The board is combining ARM 24.174.526 and 24.174.527 regarding clinical pharmacist practitioner requirements to consolidate information and to standardize rule format for listing qualifications, requirements, and renewals, similar to Subchapter 18 for medical practitioner dispensers.

24.174.528 UNPROFESSIONAL CONDUCT

AUTH: 37-1-319, 37-7-201, MCA
IMP: 37-1-316, 37-7-306, MCA

REASON: The board is repealing this rule as an unnecessary duplication of ARM 24.174.2301. The Board of Medical Examiners remains free to take action against any person alleged to have practiced medicine without the appropriate license.

24.174.601 SUMMARY OF OBJECTIVES

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

REASON: The board is repealing this rule and adding the intern practice experience provision to ARM 24.174.301.

24.174.603 OUT-OF-STATE INTERNSHIP REQUIREMENTS

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

REASON: See REASON for ARM 24.174.602.

24.174.605 FOREIGN INTERN REQUIREMENTS

AUTH: 37-1-131, 37-7-201, MCA
IMP: 37-7-201, MCA

REASON: See REASON for ARM 24.174.602.

24.174.611 APPROVED TRAINING AREAS

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

REASON: The board is revising this rule to consolidate multiple intern rules, ARM 24.174.601, 24.174.602, 24.174.605, 24.174.611, 24.174.612, and 24.174.613, and to reconcile current procedures based on school of pharmacy operations and oversight of intern requirements.

24.174.612 INTERNSHIP REQUIRED FORMS AND REPORTS

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

REASON: See REASON for ARM 24.174.602.

24.174.613 REVOCATION OR SUSPENSION OF CERTIFICATE

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

REASON: See REASON for ARM 24.174.602.

24.174.817 AUTOMATED RECORD KEEPING SYSTEMS

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

REASON: The board is combining ARM 24.174.817 and 24.174.818 into ARM 24.174.814 for standardization purposes, and to repeal outdated language and unnecessary detail that is part of standard operating procedures for pharmacy dispensing systems.

24.174.818 SECURITY

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

REASON: The board is combining ARM 24.174.817 and 24.174.818 into ARM 24.174.814 for standardization purposes, and to repeal outdated language and unnecessary detail that is part of standard operating procedures for pharmacy dispensing systems.

24.174.834 COPY OF PRESCRIPTION

AUTH: 37-7-201, MCA
IMP: 37-7-101, MCA

REASON: The board is repealing this rule after including necessary provisions in ARM 24.174.831 and ARM 24.174.2301.

24.174.902 PROSPECTIVE DRUG REVIEW

AUTH: 37-7-201, MCA
IMP: 37-7-406, MCA

REASON: The board is repealing this rule after relocating provisions into ARM 24.174.901.

24.174.1206 MEDICAL GAS FEE SCHEDULE

AUTH: 37-1-134, 37-7-201, 37-7-610, MCA
IMP: 37-7-604, 37-7-605, MCA

REASON: The board is repealing this rule after moving the fees into ARM 24.174.401.

24.174.1502 DONATION OF CANCER DRUGS

AUTH: 37-7-1401, MCA
IMP: 37-7-1401, 37-7-1403, MCA

REASON: The board is combining ARM 24.174.1501, 24.174.1502, 24.174.1508, 24.174.1509, and 24.174.1510 for standardization purposes and to simplify listing of requirements.

24.174.1504 NONACCEPTABLE CANCER DRUGS

AUTH: 37-7-1401, MCA
IMP: 37-7-1401, 37-7-1404, 37-7-1405, MCA

REASON: See reason for ARM 24.174.1503.

24.174.1507 RECORD-KEEPING REQUIREMENTS

AUTH: 37-7-1401, MCA
IMP: 37-7-1401, 37-7-1405, MCA

REASON: See reason for ARM 24.174.1506.

24.174.1508 HANDLING FEE

AUTH: 37-7-1401, MCA
IMP: 37-7-1401, 37-7-1405, MCA

REASON: The board is repealing this rule to consolidate the fee into ARM 24.174.1506.

24.174.1509 PHARMACY OR FACILITY REGISTRY

AUTH: 37-7-1401, MCA
IMP: 37-7-1401, 37-7-1403, MCA

REASON: The board is repealing this rule to consolidate and simplify into ARM 24.174.1501.

24.174.1510 INSPECTIONS AND TERMINATION FROM PROGRAM

AUTH: 37-7-1401, MCA
IMP: 37-7-1401, MCA

REASON: The board is repealing this rule as it was consolidated into ARM 24.174.1501.

24.174.1601 MEDICAL ASSISTANCE PROGRAM PURPOSE

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

REASON: The board is repealing this rule as unnecessary repetition of statute, 37-7-201, MCA.

24.174.1602 REPORTING OF SUSPECTED IMPAIRMENT

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

REASON: The board is repealing this rule as unnecessary repetition of statute, 37-7-201, MCA.

24.174.1607 REPORTING TO THE BOARD

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

REASON: The board is repealing this rule as unnecessary, as the reporting requirements are in ARM 24.174.1604, 24.174.1605, and 24.174.1606, and covered by the contract with the assistance program.

24.174.1608 PARTICIPANT DISCHARGE REQUIREMENTS

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

REASON: The board is repealing this rule as unnecessary after moving the discharge reporting requirements to ARM 24.174.1604, which already contained the program's reporting requirements to the board.

24.174.1609 RELAPSE REPORTING

AUTH: 37-1-131, 37-7-201, MCA
IMP: 37-1-131, 37-7-201, MCA

REASON: The board is repealing this rule as unnecessary. The assistance program's contract requires monitoring of licensees. Spelling out the requirements for the handling of relapses takes away from the professional judgment of the monitoring program and does not allow for individual circumstances of the monitored licensees.

24.174.1703 ELECTRONIC FORMAT REQUIRED FOR THE TRANSMISSION OF INFORMATION

AUTH: 37-7-1512, MCA
IMP: 37-7-1503, 37-7-1512, MCA

REASON: See reason for ARM 24.174.1702.

24.174.1704 REQUIREMENTS FOR SUBMITTING PRESCRIPTION REGISTRY INFORMATION TO THE BOARD

AUTH: 37-7-1512, MCA
IMP: 37-7-1503, 37-7-1512, MCA

REASON: See reason for ARM 24.174.1702.

24.174.1705 FAILURE TO REPORT PRESCRIPTION INFORMATION

AUTH: 37-1-319, 37-7-1512, MCA
IMP: 37-1-312, 37-7-1513, MCA

REASON: The board is incorporating this rule into its unprofessional conduct rule, ARM 24.174.2301.

24.174.1713 RELEASE OF PRESCRIPTION DRUG REGISTRY INFORMATION TO OTHER ENTITIES

AUTH: 37-7-1512, MCA
IMP: 37-7-1506, MCA

REASON: The board is repealing this rule as duplicating 37-7-1506(3), MCA. The board is further repealing this rule as it has not historically charged a fee for these uncomplicated reports.

24.174.1715 INTERSTATE EXCHANGE OF REGISTRY INFORMATION

AUTH: 37-7-1512, MCA
IMP: 37-7-1506, MCA

REASON: The board is repealing this rule as it duplicates 37-7-1506(1)(g), MCA.

6. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728, Helena, Montana 59624. Comments must be received no later than 5:00 p.m., August 23, 2024.

7. An electronic copy of this notice of public hearing is available at dli.mt.gov/rules and rules.mt.gov.

8. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728; Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. Pursuant to 2-4-111, MCA, the agency has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

11. Department staff has been designated to preside over and conduct this hearing.

BOARD OF PHARMACY, JEFF NIKOLAISEN, CHAIR

/s/ JENNIFER STALLKAMP
Jennifer Stallkamp
Rule Reviewer

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 16, 2024.

BEFORE THE BOARD OF REALTY REGULATION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.210.301, 24.210.641, and 24.210.667, the adoption of NEW RULES I fee abatement and II administrative suspension, and the repeal of ARM 24.210.801, 24.210.803, 24.210.805, 24.210.807, 24.210.809, 24.210.812, 24.210.818, 24.210.820, 24.210.825, 24.210.826, 24.210.827, 24.210.828, 24.210.829, 24.210.835, 24.210.1001, 24.210.1007, 24.210.1016, 24.210.1020, 24.210.1025, 24.210.1027, 24.210.1031, and 24.210.1037 pertaining to property management and timeshare registration	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, ADOPTION AND REPEAL

TO: All Concerned Persons

1. On August 16, 2024, at 9:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, https://mt-gov.zoom.us/j/89747560446
Meeting ID: 897 4756 0446, Passcode: 105329
-OR-

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 897 4756 0446, Passcode: 105329

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on August 9, 2024, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

3. GENERAL REASONABLE NECESSITY: The 2023 Montana Legislature enacted Chapter 482, Laws of 2023 (Senate Bill (SB) 455), an act generally revising laws related to realty regulation, eliminating timeshare registration, and transferring regulatory oversight of property managers from the Board of Realty Regulation to a department program. The bill was signed by the Governor on May 8, 2023, and

became effective October 1, 2023. New rules for the department's regulation of property managers were adopted December 23, 2023. It is reasonably necessary to now repeal the board's rules regarding property managers and timeshares to implement the bill.

The board is amending three rules and repealing 22 rules to implement the legislation and strike references to property management and timeshares. The board will identify additional specific reasons for the proposed new rules.

4. The rules proposed to be amended are as follows, new matter underlined, deleted matter interlined:

24.210.301 DEFINITIONS The terms used in this chapter shall have their common meaning as used in the real estate industry, and unless the context otherwise requires, the following meanings shall also apply:

(1) through (10) remain the same.

~~(11) "Designated property manager" is a property manager who has been designated by other property managers of a property management company to be the property manager with the authority for the maintenance of a trust account.~~

(12) through (21) remain the same but are renumbered (11) through (20).

~~(22)~~ (21) "Personal funds" means funds other than trust funds, which belong to the licensee ~~or the property management business~~. Uses may include, but are not limited to:

(a) trust account maintenance;

(b) financial institution fees;

(c) designated interest earnings; and

(d) purchasing checks.

~~(23)~~ (22) "Personal indebtedness" means the licensee's personal expenses ~~or expenses of the property management business~~ debited from a trust account, including, but not limited to:

(a) personal bills or expenses;

(b) recreational expenditures;

(c) personnel wages, benefits, and incentives; and

(d) business operating expenses.

(24) through (30) remain the same but are renumbered (23) through (29).

AUTH: 37-1-131, 37-51-203, MCA

IMP: 37-1-131, 37-1-136, 37-51-103, 37-51-204, 37-51-301, 37-51-302, 37-51-303, 37-51-306, 37-51-309, 37-51-313, 37-51-314, 37-51-315, 37-51-321, 37-51-324, 37-51-401, MCA

24.210.641 UNPROFESSIONAL CONDUCT (1) through (1)(x) remain the same.

~~(y) failing, while acting as a property manager as defined in 37-51-102, MCA, to abide by the requirements of Title 37, chapter 51, part 6, MCA, and the requirements of the Board of Realty Regulation's rules for property management as set forth in ARM 24.210.805 and 24.210.828, except for the advertising requirements of ARM 24.210.828(3)(u);~~

(z) through (av) remain the same but are renumbered (y) through (au).

(2) and (3) remain the same.

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-51-203, MCA
IMP: 37-1-131, 37-1-136, 37-1-137, 37-1-307, 37-1-312, 37-1-316, 37-1-319, 37-51-306, 37-51-309, 37-51-313, 37-51-314, 37-51-321, 37-51-324, MCA

24.210.667 CONTINUING REAL ESTATE EDUCATION (1) through (2)(a) remain the same.

(b) endorsed by a national, state, or local Association of REALTORS®, ~~or~~ a national, state, or local real estate association, or a national, state, or local landlords', ~~or property management~~ association.

(3) through (6) remain the same.

AUTH: 37-1-131, 37-1-319, 37-51-203, MCA
IMP: 37-1-131, 37-1-141, 37-1-306, 37-1-319, 37-51-202, 37-51-204, MCA

5. The proposed new rules are as follows:

NEW RULE I FEE ABATEMENT (1) The Board of Realty Regulation adopts and incorporates by reference the fee abatement rule of the Department of Labor and Industry found at ARM 24.101.301.

AUTH: 37-1-131, MCA
IMP: 17-2-302, 17-2-303, 37-1-134, MCA

REASON: The board is proposing this new rule to adopt and incorporate by reference the division's rule on fee abatement, ARM 24.101.301. The standardized abatement procedures have been in place for several years and the rest of the professional licensing boards have already adopted the rule.

NEW RULE II ADMINISTRATIVE SUSPENSION (1) The board authorizes the department to:

(a) administratively suspend licenses for deficiencies set forth in 37-1-321(1)(a) though (e), MCA; or

(b) file a complaint pertaining to the deficiencies in (1) that are based on repeated or egregious conduct, or that have co-occurring misconduct allegations that directly implicate public safety and may warrant formal disciplinary action.

(2) An administrative suspension is not a negative, adverse, or disciplinary action under Title 37, MCA, and is not reportable under federal law and regulations implementing the Healthcare Practitioner Databank or the department's licensee lookup and license verification databank.

AUTH: 37-1-131, MCA
IMP: 37-1-321, MCA

REASON: Section 37-1-321, MCA, permits the board to authorize the department to take certain non-disciplinary actions regarding licensees who are out of compliance with administrative licensure requirements such as not meeting continuing education requirements, failing to respond to continuing education audits, not paying required fees, not meeting initial licensing requirements, and noncompliance with board final orders. The board authorized the department to take these actions previously by motion. Reasonable necessity exists to adopt this rule to formally, publicly, and accessibly reiterate that authorization, so the public and licensees are aware of the authorization.

6. The rules proposed to be repealed are as follows:

24.210.801 FEE SCHEDULE

AUTH: 37-1-134, 37-51-203, MCA
IMP: 37-1-134, 37-1-141, 37-51-207, MCA

REASON: It is reasonably necessary to repeal all the property management rules in subchapter 8 to implement SB 455. The board no longer regulates property managers in Montana.

24.210.803 PROPERTY MANAGEMENT DEFINITIONS

AUTH: 37-1-131, 37-51-203, MCA
IMP: 37-51-102, 37-51-602, MCA

24.210.805 PROPERTY MANAGEMENT TRUST ACCOUNT REQUIREMENTS

AUTH: 37-1-131, 37-1-319, 37-51-203, MCA
IMP: 37-1-131, 37-1-319, 37-51-324, MCA

24.210.807 PROPERTY MANAGEMENT LICENSE TRANSFER REQUIREMENTS

AUTH: 37-1-131, 37-51-203, MCA
IMP: 37-1-131, 37-51-605, MCA

24.210.809 PRELICENSING PROPERTY MANAGEMENT COURSE AND INSTRUCTOR REQUIREMENTS

AUTH: 37-1-131, 37-51-203, MCA
IMP: 37-51-202, 37-51-601, 37-51-603, MCA

24.210.812 APPLICATION FOR PROPERTY MANAGEMENT LICENSURE

AUTH: 37-1-131, 37-51-203, MCA

IMP: 37-51-202, 37-51-601, 37-51-603, MCA

24.210.818 PROPERTY MANAGEMENT EXAMINATION

AUTH: 37-1-131, 37-51-203, MCA
IMP: 37-1-131, 37-1-312, 37-1-316, 37-51-601, 37-51-603, MCA

24.210.820 TRUST ACCOUNT COURSE REQUIREMENT

AUTH: 37-1-131, MCA
IMP: 37-1-131, MCA

24.210.825 RENEWALS

AUTH: 37-1-131, MCA
IMP: 37-1-101, 37-1-131, 37-1-141, MCA

24.210.826 INACTIVE TO ACTIVE STATUS - PROPERTY MANAGEMENT LICENSES

AUTH: 37-1-131, 37-1-319, 37-51-203, MCA
IMP: 37-1-131, 37-1-306, 37-1-319, 37-51-202, 37-51-204, 37-51-311, 37-51-601, MCA

24.210.827 INACTIVE STATUS

AUTH: 37-1-131, 37-1-319, 37-51-203, MCA
IMP: 37-1-131, 37-1-141, 37-1-319, 37-51-601, MCA

24.210.828 UNPROFESSIONAL CONDUCT FOR PROPERTY MANAGEMENT LICENSEES

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-51-203, MCA
IMP: 37-1-131, 37-1-136, 37-1-137, 37-1-316, 37-1-319, 37-51-607, MCA

24.210.829 NEW LICENSEE MANDATORY CONTINUING EDUCATION – PROPERTY MANAGER

AUTH: 37-1-131, 37-1-319, 37-51-203, MCA
IMP: 37-1-306, 37-1-319, 37-51-603, MCA

24.210.835 CONTINUING PROPERTY MANAGEMENT EDUCATION

AUTH: 37-1-131, 37-1-319, 37-51-203, MCA
IMP: 37-1-131, 37-1-141, 37-1-306, 37-1-319, 37-51-202, 37-51-204, MCA

24.210.1001 FEE SCHEDULE

AUTH: 37-1-131, 37-1-134, 37-53-104, MCA
IMP: 37-1-134, 37-1-141, 37-53-201, 37-53-202, 37-53-203, 37-53-204, 37-53-301, MCA

REASON: It is reasonably necessary to repeal all the timeshare licensing rules in subchapter 10 to implement SB 455. The board no longer regulates timeshare offerings in Montana.

24.210.1007 LICENSURE OF TIMESHARE SALESPERSONS

AUTH: 37-1-131, 37-53-104, MCA
IMP: 37-1-131, 37-53-301, MCA

24.210.1016 TIMESHARE COURSE OF EDUCATION REQUIRED FOR LICENSURE

AUTH: 37-1-131, 37-53-104, MCA
IMP: 37-1-131, 37-53-301, MCA

24.210.1020 RENEWALS

AUTH: 37-1-131, 37-53-104, MCA
IMP: 37-1-131, 37-1-141, MCA

24.210.1025 TIMESHARE REGISTRATION APPLICATION REQUIREMENTS

AUTH: 37-53-104, MCA
IMP: 37-53-104, 37-53-201, 37-53-202, MCA

24.210.1027 ALTERNATIVE ACCEPTABLE DOCUMENTS FOR TIMESHARE REGISTRATION

AUTH: 37-53-104, 37-53-204, MCA
IMP: 37-53-104, 37-53-204, MCA

24.210.1031 TIMESHARE CONDITIONS OF REGISTRATION REQUIREMENTS

AUTH: 37-53-104, 37-53-212, MCA
IMP: 37-53-104, 37-53-212, MCA

24.210.1037 TIMESHARE AMENDMENT FOR MATERIAL CHANGE REGISTRATION REQUIREMENTS

AUTH: 37-53-104, MCA

IMP: 37-53-203, MCA

7. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728, Helena, Montana 59624. Comments must be received no later than 5:00 p.m., August 23, 2024.

8. An electronic copy of this notice of public hearing is available at dli.mt.gov/rules and rules.mt.gov.

9. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728, Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on May 25, 2023, by electronic mail.

11. Pursuant to 2-4-111, MCA, the agency has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

12. Department staff has been designated to preside over and conduct this hearing.

BOARD OF REALTY REGULATION
SHARON VIRGIN, PRESIDING OFFICER

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 16, 2024.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.301.138, 24.301.142, 24.301.146, 24.301.154, 24.301.161, 24.301.172, 24.301.173, 24.301.181, 24.301.201, 24.301.202, 24.301.203, 24.301.206, 24.301.207, 24.301.351, 24.301.401, 24.301.481, 24.301.903, and 24.301.904, the amendment and transfer of ARM 24.301.501, 24.301.511, 24.301.513, 24.301.515, 24.301.523, 24.301.542, 24.301.565, and 24.301.567, the adoption of NEW RULES I through XVIII, and the repeal of ARM 24.301.514, 24.301.516, 24.301.517, 24.301.518, 24.301.519, 24.301.520, 24.301.521, 24.301.522, 24.301.525, 24.301.535, 24.301.536, 24.301.537, 24.301.540, 24.301.543, 24.301.544, 24.301.545, 24.301.546, 24.301.547, 24.301.549, 24.301.550, 24.301.557, 24.301.558, 24.301.559, 24.301.560, 24.301.561, 24.301.562, 24.301.563, 24.301.564, 24.301.566, 24.301.576, and 24.301.577 pertaining to the state building code	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, AMENDMENT AND TRANSFER, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On August 19, 2024, at 10:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, https://mt-gov.zoom.us/j/84321324816
Meeting ID: 843 2132 4816, Passcode: 166993
-OR-

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 843 2132 4816, Passcode: 166993

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on August 12, 2024, to advise us of the nature of the accommodation that you need. Please

contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The department proposes the following amendments to the Building Codes rules to update grammar and language. The amendments are intended to clarify and simplify the rules for ease of use by the department, the public, and all interested parties. Amendments are also necessary to implement and comply with legislation enacted by the 2023 Legislature. Substantive changes to each rule, including changes resulting from legislation, are explained in the reasonable necessity statements following each rule.

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

24.301.138 CALCULATION OF FEES (1) International Building Code (IBC) Section 109.2, Schedule of Permit Fees, is modified for use by the department with the following additions:

(a) through (3) remain the same.

(4) The value or valuation of a building or structure under any of the provisions of the ~~International Building Code~~ IBC will be determined using one of the following methods of determining valuation, listed in their order of priority:

(a) through (5) remain the same.

(6) Fees for wind farm turbine foundations will be calculated as $200 for the first turbine and $100 for each additional turbine included in the project.

(7) Fees for solar fields will be calculated at $100/megawatt.

(6) through (8) remain the same, but are renumbered (8) through (10).

AUTH: 50-60-104, 50-60-203, MCA
IMP: 50-60-103, 50-60-104, 50-60-203, MCA

REASON: The proposed amendment is necessary to provide the public notice of the cost of permits for wind turbine foundations and solar fields. The department has issued permits for wind turbines and solar fields in previous years, and adopting the permit amounts in rule provides notice to the public. Based on the previous three years, 2020, 2021, and 2022, the department estimates that it will inspect and collect fees from approximately one wind farm's turbine foundations per year, and the fees will total approximately $13,000 per wind farm inspection. Based on historical data from approximately the last ten years, the department estimates that approximately one or two solar field permits will be issued each year, and the fees collected will total approximately $8,500 per year.

24.301.142 MODIFICATIONS TO THE INTERNATIONAL BUILDING CODE APPLICABLE ONLY TO THE DEPARTMENT'S CODE ENFORCEMENT PROGRAM (1) The following modifications to the International Building Code (IBC) are applicable only to the department's building code enforcement program. The

referenced sections remain without amendment for local government building code enforcement programs.

(2) The department will use 50-60-109 and 50-60-110, MCA, in cases requiring prosecution in lieu of Section 114, Violations, of the IBC. When a person fails to submit required plans, obtain a permit, correct plans, or comply with an order of the department, the department, as authorized by 50-60-109, MCA, may bring civil action to enjoin the person from constructing or using the building.

(3) and (4) remain the same.

(5) Subsection 107.1, General, of the IBC is amended to read as follows: "Submittal documents consisting of construction documents, statement of special inspections, geotechnical report, and other data shall be submitted electronically or on paper no larger than 11 by 17 inches. The construction documents shall be prepared by a registered design professional as required by specific provisions throughout the International Building Code (IBC) as adopted by the department in ARM 24.301.131. The department is authorized to waive the submission of construction documents and other data not required to be prepared by a registered design professional if it is found that the nature of the work applied for is such that review of construction documents is not necessary to obtain compliance with the IBC as adopted by the department."

(6) Subsection 111.1, Change of occupancy, of the IBC is amended with the addition of the following: "On a case-by-case basis, the building official or his agent may grant the owner permission to occupy and use a building or portions thereof prior to completion of the project when the building official or his agent finds the building or structure to be in substantial compliance with the intent of the International Building Code."

(7) Subsection 111.2, Certificate issued, of the IBC is amended to read:

(a) "111.2 Certificate issued. If the building official or the building official's agent makes all the inspections of a building or structure required by Section 110, Inspections, and finds it was constructed in accordance with the provisions of the state building code, the building official shall issue a certificate of occupancy, as referenced in 50-60-107, MCA, which shall contain the following:

(i) through (vii) remain the same.

(viii) the use and occupancy, in accordance with the provisions of Chapter 3, Occupancy Classification and Use;

(ix) the type of construction as defined in Chapter 6, Types of Construction;

(x) through (b) remain the same.

(c) "Formal Written Approval: In situations where the department was unable to perform the required inspections referenced in Section 110, Inspections, of the IBC, but no significant deficiencies from the state building code have been noted, the department may issue a letter of formal written approval in lieu of a certificate of occupancy."

(8) The department will use the applicable provisions of the Montana Administrative Procedure Act in all cases of appeal in lieu of Section 113, Board of Appeals, of the IBC.

(9) Subsection 1809.5, Frost protection, of the IBC requires that footings and foundations shall extend below the frost line. In all areas of the state outside of certified local government jurisdictions, the minimum depth from finished grade to

the bottom of footings shall be three feet for single story wood or metal frame buildings, and four feet for multistory or masonry buildings. Buildings located on highly expansive or unstable soils may need engineered footings and foundation walls that extend below the minimum depths indicated above. At the discretion of the building official, the above minimum depths may not be required for properly designed so-called monolithic slabs for single story storage and similar use buildings. The building official may require monolithic slabs to be designed and stamped or certified by a Montana registered engineer who practices structural design. The design and stamp of a Montana licensed architect may be accepted in lieu of an engineer's stamp when the monolithic slab design is an incidental part of an architectural building design, as allowed by 37-67-103, MCA.

~~(10) Delete Chapter 32 in its entirety.~~

AUTH: 50-60-203, MCA
IMP: 50-60-107, 50-60-108, 50-60-109, 50-60-203, 50-60-212, MCA

REASON: The proposed amendment to (1) is necessary to clarify the acronym IBC.

The proposed amendments to (2), (5), (6), (7), (8), and (9) are necessary to include the names of each code section for convenience and ease of use.

The proposed amendment deleting (10) is necessary because IBC Chapter 32, Encroachments into the Public Right-of-Way, is not appliable to either the department's or local government's building code enforcement programs. The State Building Code does not provide authority over easements to the department or local governments for building code purposes. The section deleting IBC Chapter 32 is transferred to ARM 24.301.146 as proposed new (33).

24.301.146 MODIFICATIONS TO THE INTERNATIONAL BUILDING CODE APPLICABLE TO BOTH THE DEPARTMENT'S AND LOCAL GOVERNMENT CODE ENFORCEMENT PROGRAMS (1) through (5) remain the same.

(6) Subsection 101.4.7, Existing Buildings, is amended by the addition of the following sentence: "ARM 24.301.171 allows the provisions of either the International Building Code or the International Existing Building Code to be used for the remodel, repair, alteration, change of occupancy, addition, and relocation of an existing building."

(7) Subsection 105.1.1, Annual Permit, is deleted and replaced with the following: "At the discretion of the building official, a single annual permit may be issued for multiple buildings owned by a single entity, located in a single geographic location, which require similar and repetitive repair, restoration, and maintenance work."

(8) Subsection 107.2.8, Relocatable Buildings, is amended to delete "Section 3112" and replace it with "Section 3113."

(9) Subsection 107.3.1, Approval of Construction Documents, is deleted and replaced with the following sentence: "When the building official issues the permit where plans are required, the building official shall approve the construction documents, with corrections as required, or with adequate written resolution of deficiencies noted in plan review comments."

(10) remains the same.

(11) The following modifications apply to riding arenas:

(a) Subsection 312.1, General, is amended by addition of the following paragraph: "Riding arenas limited to occupant loads of 200 or less and used for boarding, breeding, and training of horses, horse shows and competitions, clinics and rider instruction, and open riding are considered agricultural buildings subject to the provisions of Appendix Chapter C, as amended. Uses such as rodeos, barn dances, craft and other nonlivestock shows, conventions, and similar events which result in large numbers of spectators or occupants are not allowed in riding arenas classified as agricultural buildings."

(b) Appendix Chapter C, Subsection C101.1, Scope, is amended by addition of: "9. Riding arenas as defined in amended Subsection 312.1, General."

(c) Appendix Chapter C, Subsection C104.1, Exit Facilities, is amended by addition of the following sentences to Exception 2: "The portion of riding arena buildings where riding will occur or where spectators may be present or seating is provided shall be provided with a minimum of four exits directly to the outside, with the exits located in a manner acceptable to the department that enhances exit from spectator areas. Exits from this portion of the building shall not be provided with a latch or lock unless it is panic hardware."

(d) Appendix Chapter C, Subsection C104.1, Exit Facilities, is amended by addition of Exception 3: "Exit doors for riding arenas shall not be less than 3 feet wide by 6 feet 8 inches high."

(12) through (15) remain the same.

(16) The standards for fire-extinguishing systems and standpipe systems referenced in Chapter 9 of the International Building Code shall be the following unamended National Fire Protection Association (NFPA) Standards:

(a) Fire-extinguishing system.

(i) remains the same.

(ii) Installation of Sprinkler Systems in Group R Occupancies Four Stories or Less: NFPA 13R Standard for the Installation of Sprinkler Systems in ~~Residential Occupancies up to and Including Four Stories in Height~~ Low-Rise Residential Occupancies, 2019 edition.

(b) remains the same.

(c) Notwithstanding any other provisions or references to the contrary within the NFPA standards or fire code as referenced in (5), the authority having jurisdiction over any fire protection system required by the International Building Code shall be the building official. ~~The building official may delegate this authority to governmental fire agencies organized under Title 7, chapter 33, MCA, that are approved by the Department of Justice, Fire Prevention and Investigation Section, to adopt and enforce a fire code in their fire service area.~~

(17) Delete Subsection 903.2.8, Group R, and replace with the following:

"1. An approved automatic sprinkler system installed in accordance with Section 903.3, Installation Requirements, shall be provided in all Group R buildings meeting any of the following criteria:

"a. 9 or more transient guests or 5 or more transient guestrooms in R-1 or R-2 occupancies;

"b. 9 or more occupants in other than dwelling units;

"c. 5 or more dwelling units; or

"d. more than 2 stories in other than dwelling units.

"2. In lieu of the above required automatic sprinkler system in buildings not more than three stories above the lowest level of exit discharge, each ~~transient guestroom~~ dwelling or sleeping unit may be provided with at least one door leading directly to an exterior exit access that leads directly to approved exits.

"3. "Transient guest" for the purpose of this subsection shall mean an occupant who is primarily transient in nature, staying at one location for 30 days or less."

"4. "The requirements for automatic sprinkler systems for R-4 occupancies are found in ARM 24.301.146."

(18) Subsection 903.2.4.2, Group F-1 Distilled Spirits, is amended to include: "Exception: An automatic sprinkler system is not required where a Group F1 fire area used for the manufacture of distilled spirits is not more than one story above grade plane, and not exceeding 2,500 square feet."

(19) Subsection 903.2.9.3, Group S-1 Distilled Spirits or Wine, is amended to include: "Exception: An automatic sprinkler system is not required where a Group S1 fire area used for the bulk storage of distilled spirits or wine is not more than one story above grade plane, and not exceeding 2,500 square feet."

(20) Subsection 903.3.1.2, NFPA 13R sprinkler systems, is amended as follows: Automatic sprinkler systems in Group R occupancies shall be permitted to be installed throughout in accordance with NFPA 13R where the Group R occupancy meets all of the following conditions:

"1. Four stories or fewer above grade plane.

"2. Building is 60ft in height or less above grade plane.

"3. The floor level of the lowest story is 30 feet (9144 mm) or less below the lowest level of fire department vehicle access.

"The number of stories of Group R occupancies constructed in accordance with Sections 510.2 and 510.4 shall be measured from grade plane."

(21) Subsection 905.3.1, Height, is amended as follows: "Class III standpipe systems shall be installed throughout buildings where any of the following conditions exist:

"1. Four or more stories are above or below grade plane.

"2. Building is 60ft in height or more above grade plane.

"3. The floor level of the lowest story is located more than 30 feet (9144 mm) below the highest level of fire department vehicle access."

(22) Table 1006.2.1, Spaces with One Exit or Exit Access Doorway, referenced in subsection 1006.2.1, Egress based on occupant load and common path of egress travel distance, shall be amended for R1, R2, R3, and R4 occupancies by deletion of NP and insertion of the number 100 for occupant loads less than 30 and 75 for occupant loads greater than 30.

~~(20)~~ (23) Subsection ~~1020.1~~ 1020.2, Construction, is amended by addition of the following: "Upgrading of corridors in existing E occupancies serving an occupant load of 30 or more, may have walls and ceilings of not less than one-hour fire-resistive construction as required by this code. Existing walls surfaced with wood lathe and plaster in good condition or 1/2-inch gypsum wallboard or openings with fixed wired glass set in steel frames are permitted for corridor walls and ceilings and occupancy separations when approved. Doors opening into such corridors shall be

protected by 20-minute fire assemblies or solid wood doors not less than 1 3/4 inches (45 mm) thick. Where the existing frame will not accommodate the 1 3/4-inch-thick door, a 1 3/8-inch-thick solid bonded wood-core door or equivalent insulated steel door shall be permitted. Doors shall be self-closing or automatic closing by smoke detection. Transoms and openings other than doors from corridors to rooms shall comply with this code or shall be covered with a minimum of 3/4-inch plywood or 1/2-inch gypsum wallboard or equivalent material on the room side. Exception: Existing corridor walls, ceilings, and opening protection not in compliance with the above may be continued when such buildings are protected with an approved automatic sprinkler system throughout. Such sprinkler system may be supplied from the domestic water system if it is of adequate volume and pressure."

~~(21)~~ (24) For "R" occupancies that are exempt from the requirements of a fire sprinkler system, pursuant to ARM 24.301.146(16), Table ~~1020.1~~ 1020.2, Corridor Fire-Resistance Rating, referenced in subsection ~~1020.1~~ 1020.2, Construction, shall be amended in regard to "R" occupancies by the deletion of the language "Greater than 10" and insertion of the language "Greater than 8" under the heading "Occupant Load Serviced By Corridor." The table shall also be amended by the deletion of the language "Not Permitted" and insertion of "1" under the heading "Without sprinkler system".

~~(22)~~ (25) Subsection ~~1030.1~~ 1031, Emergency Escape and Rescue, is amended as follows: "General. In addition to the means of egress required by this chapter, emergency escape and rescue openings shall be required in all sleeping rooms in Group R occupancies located in buildings that do not have an automatic sprinkler system and in the following occupancies:"

~~(23)~~ (26) Subsection 1608.2, Ground Snow Loads, is deleted and replaced with the following: "Snow loads shall be determined by the building official. In areas of the state outside of certified city, county, and town jurisdictions, the design snow load shall be ~~based on the ground snow loads developed in "Snow Loads for Structural Design in Montana", Civil Engineering Department, Montana State University, 2004 Revised Edition~~ calculated using the 2022 edition of the American Society of Civil Engineer's "Minimum Design Loads and Associated Criteria for Buildings and Other Structures, ASCE/SEI 7-22." The information is available online using the "ASCE 7 Hazard Tool" at https://asce7hazardtool.online/. The minimum design roof snow load after allowed reductions shall be 30 psf unless justified by a Montana licensed design professional to the satisfaction of the building official. Coefficients and factors other than those specified in the building code may be used when justified by a Montana licensed design professional to the satisfaction of the building official."

(24) remains the same but is renumbered (27).

~~(25)~~ (28) Table 2902.1, MINIMUM NUMBER OF REQUIRED PLUMBING FIXTURES, is modified by deleting and replacing with ARM 24.301.351.

(26) and (27) remain the same, but are renumbered (29) and (30)

~~(28)~~ (31) Delete Section 3107, General, in its entirety.

~~(29)~~ (32) Delete Section 3109, General, in its entirety and replace with the International Swimming Pool and Spa Code, 2021 edition as adopted in ARM 24.301.175.

(33) Delete Chapter 32, Encroachments into the Public Right-of-Way, in its entirety.

~~(30)~~ (34) Delete Chapter 33, Safeguards During Construction, in its entirety.

(31) through (41) remain the same but are renumbered (35) through (45).

~~(42)~~ (46) Notwithstanding any other provisions within the International Building Code, the following adult group residential facilities, licensed by the Department of Public Health and Human Services will be classified and treated as follows:

(a) and (b) remain the same.

(c) An assisted living facility with 20 or more ambulatory or non-ambulatory residents will be classified as an R-2 occupancy for building permit and construction standards and shall meet accessibility standards as provided in IBC section 1103, Scoping Requirements.

(i) and (ii) remain the same.

~~(43)~~ (47) Section 50-60-102, MCA, exempts certain buildings from application of the state building codes. Provisions of the ~~International Building Code~~ IBC shall not be applied in determining whether a building or structure is exempt from the state building codes. For example, fire walls as described in Section 706, Fire Walls, of the ~~International Building Code~~ IBC shall not be used to separate buildings otherwise covered by the state building codes into smaller buildings that would, if alone, be exempted by 50-60-102, MCA.

(44) through (47) remain the same but are renumbered (48) through (51).

AUTH: 50-60-203, MCA
IMP: 50-60-101, 50-60-102, 50-60-104, 50-60-201, 50-60-203, 50-60-205, MCA

REASON: The proposed amendments to (6), (7), (8), (9), (11)(a) through (d), (17), (18), (19) and renumbered (24), (25), (26), (27), (29), (32), (34), (46)(c), and (47) are necessary to include the names of each code section for convenience and ease of use.

The proposed amendment to (16)(a)(ii) is necessary to correct the title to the National Fire Protection Association's (NFPA) "NFPA 13R Standard for the Installation of Sprinkler Systems in Low-Rise Residential Occupancies, 2019 edition," which is adopted unamended in this rule.

The proposed repeal of the last sentence of (16)(c) is necessary because it conflicts with Title 50, chapter 60, MCA, specifically including 50-60-202, MCA, which gives the department exclusive authority to promulgate building regulations. It is necessary to repeal this portion of the rule because a building official does not have the authority to delegate the department's responsibility to administer all portions of the IBC adopted by the department.

The proposed new (20) is necessary to match the height restriction in item 2. with the 60-foot height restriction in the NFPA 13R, Section 1.1.

The proposed new (21) is necessary to match the height restriction in item 2. with the 60-foot height restriction in the NFPA 13R, Section 1.1.

The proposed new (22), and the proposed amendments to renumbered (24) and (25), are necessary because the IBC, as written, does not allow residential (R)

occupancies to be constructed without sprinkler systems. The department determined that certain R occupancies may be safely constructed without sprinkler systems if other fire protection and health and safety measures are required. The new section adopts values consistent with other occupancies under the IBC to protect health and safety.

The proposed amendment to renumbered (26) is necessary to update the tool used to calculate snow loads for residential structures to the 2022 edition of the American Society of Civil Engineer (ASCE)'s "Minimum Design Loads and Associated Criteria for Buildings and Other Structures, ASCE/SEI 7-22." The department provided information to the ASCE to ensure that the 2022 ASCE materials are accurate for snow loads in this state. The ASCE's materials are also conveniently available online using the "ASCE 7 Hazard Tool."

The proposed new (33), deleting IBC Chapter 32, Encroachments into the Public Right-of-Way, is necessary because the State Building Code does not grant the department or local governments statutory authority over easements or public rights-of-way for building code purposes. This section is transferred from ARM 24.301.142 because it applies to both the department and local government's building code enforcement programs.

24.301.154 INCORPORATION BY REFERENCE OF INTERNATIONAL RESIDENTIAL CODE (1) through (4) remain the same.

(5) Subsection R301.6, Roof Load, is deleted and replaced with the following: "Snow loads shall be determined by the building official. In areas of the state outside of certified city, county, or town jurisdictions, the design snow load shall be based on the ground snow loads ~~developed in "Snow Loads for Structural Design in Montana", Civil Engineering Department, Montana State University, 2004 revised edition~~ calculated using the 2022 edition of the American Society of Civil Engineer's "Minimum Design Loads and Associated Criteria for Buildings and Other Structures, ASCE/SEI 7-22." The information is available online using the "ASCE 7 Hazard Tool" at https://asce7hazardtool.online/. The minimum design roof snow load after allowed reductions shall be 30 psf unless justified by a Montana licensed design professional to the satisfaction of the building official. Coefficients and factors other than those specified in the building code may be used when justified by a Montana licensed design professional to the satisfaction of the building official."

(6) Subsection ~~302.2.2~~ R302.2.2, Common walls, delete "Chapters 34 through 43" and replace with "the adopted electrical code in ARM Title 24, chapter 301, subchapter 4."

(7) Subsection ~~302.2.4~~ R302.2.6, Structural Independence, delete exception number five and replace with the following: "Townhouses separated by a common two-hour fire-resistance-rated wall as provided in Section R302.2."

(8) remains the same.

(9) Subsection ~~309.5~~ R309.5, Fire Sprinklers, is deleted in its entirety.

(10) and (11) remain the same.

(12) Subsection ~~312.1.1~~ R312.1.1, Where Required, delete the first sentence and replace with the following: "Guards shall be located along open-sided walking surfaces, including stairs, ramps, and landings, that are located more than 30 inches measured vertically to the floor or grade below."

(13) and (14) remain the same.

(15) Subsection ~~403.1.6~~ R403.1.6, Foundation Anchorage, is deleted in its entirety and replaced with the following: "Where wood sill and sole plates are supported directly on continuous foundation walls or monolithic slabs with integral footings required by the provisions of this code, they shall be anchored to the foundation in accordance with this section. Cold-formed steel floor and wall framing shall be anchored to the foundation in accordance with Section R505.3.1 or R603.3.1. Wood sole plates at all exterior walls, wood sole plates of braced wall lines at building interiors on monolithic slabs with integral footings and all wood sill plates shall be anchored to the foundation with minimum one-half inch diameter anchor bolts spaced a maximum of six feet on center or approved anchors or anchor straps spaced as required to provide equivalent anchorage to the one-half inch diameter anchor bolts. Bolts shall extend a minimum of seven inches into concrete or grouted cells of concrete masonry units. A nut and washer shall be tightened on each anchor bolt. There shall be a minimum of two bolts per plate section with one bolt located not more than 12 inches or less than seven bolt diameters from each end of the plate section. Interior bearing wall sole plates on monolithic slab foundations with integral footings that are not part of a braced wall line shall be positively anchored with approved fasteners. Sill plates and sole plates shall be protected against decay and termites where required by sections R317 and R318.

Exceptions:

1. Walls 24 inches total length or shorter connecting offset braced wall panels shall be anchored to the foundation with a minimum of one anchor bolt located in the center third of the plate section and shall be attached to adjacent braced wall panels at corners as shown in item 8 of Table R602.3(1).

2. Connections of walls 12 inches total length or shorter connecting offset braced wall panels to the foundation without anchor bolts shall be permitted. The wall shall be attached to adjacent braced wall panels at corners as shown in item 8 of table R602.3(1)."

(16) remains the same.

(17) Subsection ~~602.10~~ R602.10, Wall Bracing, delete the first sentence and replace with the following: "Building shall be braced in accordance with this section or, when applicable, Section R602.12, or the most current version of APA System Report SR-102 as an alternate method.

(18) and (19) remain the same.

(20) ~~Add new~~ Replace subsection R703.4.1 as follows: "R703.4.1, Flashing Materials. Approved flashing materials shall be corrosion-resistant. Self-adhered membranes used as flashing shall comply with AAMA 711. Pan Flashing shall comply with Subsection R703.4.2. Installation of flashing materials shall be in accordance with Subsection R703.4.3.

(21) and (22) remain the same.

(23) Subsection R905.1.2 is amended by deletion of the language "areas where there has been a history of ice forming along the eaves causing a backup of water as designated in Table R301.2" and insert "the State of Montana."

(23) and (24) remain the same but are renumbered (24) and (25).

AUTH: 50-60-203, MCA

IMP: 50-60-102, 50-60-201, 50-60-203, MCA

REASON: The proposed amendments to (6), (7), (9), (15), (17), and (20) are necessary to update referenced sections of the International Residential Code (IRC).

The proposed amendment to (5) is necessary to update the tool used to calculate snow loads for residential structures to the 2022 edition of the American Society of Civil Engineer (ASCE)'s "Minimum Design Loads and Associated Criteria for Buildings and Other Structures, ASCE/SEI 7-22." The department provided information to the ASCE to ensure that the 2022 ASCE materials are accurate for snow loads in this state. The ASCE's materials are also conveniently available online using the "ASCE 7 Hazard Tool."

The proposed amendment adding new (23) is necessary because the IRC requires ice dams only in areas where there is a history of ice forming along eaves, and all areas of this state have a history of ice forming along eaves of roofs; therefore, it is necessary to require ice dams for the entire state without exception.

24.301.161 INCORPORATION BY REFERENCE OF INTERNATIONAL ENERGY CONSERVATION CODE (1) The department adopts and incorporates by reference the International Code Council's International Energy Conservation Code, 2021 edition, referred to as the International Energy Conservation Code, unless another edition is specifically stated, together with the following Appendix and amendments:

(a) and (b) remain the same.

(c) "C402.5.1.2 Air barrier compliance is deleted and replaced with the following: "A continuous barrier for the opaque building envelope shall comply with the following: Buildings or portions of buildings, including group R and I occupancies, shall meet the provisions of Section C402.5.2 or C402.5.3 or R402.4.1.2 [402.4.1.2] & R402.4.1.3 [402.4.1.3]."

(d) Subsection C405.2.4.2 Sidelit daylight zone is amended to remove requirement (3) in its entirety.

(e) Subsection C405.11 Automatic receptacle control function is deleted in its entirety.

(f) Subsection C405.12 Energy monitoring is deleted in its entirety.

~~(c)~~ (g) Table ~~R402.1.2~~ R402.1.3, INSULATION AND FENESTRATION REQUIREMENTS BY COMPONENT, is amending requirements for Climate Zone 6 as WOOD FRAMED WALL R-VALUE 'R-21 or ~~R-20 + R-5ci~~ R13 + R-5ci or R-13 + R-10ci or R-15ci.'

~~(d)~~ (h) Table ~~R402.1.4, EQUIVALENT *U*-FACTORS~~ 402.1.2, MAXIMUM ASSEMBLY U-FACTORS AND FENESTRATION REQUIREMENTS, is amending requirements as shown below in the table:

Climate Zone	Fenestration *U-Factor*	Skylight *U*-Factor	Ceiling *U*-Factor	Frame Wall *U*-Factor	Mass Wall *U*-Factor	Floor *U*-Factor	Basement Wall *U*-Factor	Crawl Space Wall *U*-Factor

6	0.30	0.55	0.026	0.045	0.060	0.033	0.050	0.055

(e) through (m) remain the same but are renumbered (i) through (q).

~~(n) Appendix CC, Zero Energy Commercial Building Provisions. Appendix CC may be adopted by a certified city, county, or town building code jurisdiction. The department shall not apply or enforce Appendix CC.~~

(o) remains the same but is renumbered (r).

(2) and (3) remain the same.

AUTH: 50-60-203, 50-60-803, MCA
IMP: 50-60-201, 50-60-203, 50-60-803, MCA

REASON: The proposed amendments to renumbered (1)(g) and (h) are necessary to update references to the International Energy Conservation Code (IECC). The proposed amendments adding new (1)(c) is necessary because it allows residential units inside commercial buildings to be tested in accordance with either the commercial requirements as a whole or residential requirements for individual units. This flexibility in testing will reduce costs and allow for alternatives that existed in the 2018 IECC. Subsection (1)(d) is amended to remove the requirement for a second sidelit daylight zone under C405.2.4.2(3) because one zone is adequate, and the cost to the lighting controls is high compared to the gain in energy efficiency. Subsections (1)(e) and (f) are necessary to delete subsections C405.11 and C405.12 because the requirements of those subsections significantly increase cost for while providing little improvement in energy conservation. The repeal of (1)(n), adopting Appendix CC of the IECC, is necessary to comply with the requirements of House Bill 241, 2023 Montana Laws, Chapter 578. House Bill 241 amended 50-60-203(4), MCA, to state that the state building code cannot require buildings to be "constructed to have solar panels or wiring, batteries, or other equipment for solar panels or electric vehicles." Appendix CC of the IECC, if implemented, could lead to the requirement for solar panel installation on buildings; therefore, it is necessary to repeal the department's adoption of Appendix CC.

24.301.172 INCORPORATION BY REFERENCE OF INTERNATIONAL MECHANICAL CODE (1) The department adopts and incorporates by reference the International Mechanical Code (IMC), 2021 edition, published by the International Code Council, unless another edition is specifically stated, together with the following amendments:

(a) through (c) remain the same.

(d) The fees established in Subsection ~~106.5.2~~ 109.2, Schedule of Permit Fees are as follows:

"(1) The mechanical cost shall be the cost to the owner of all labor charges and all mechanical materials and equipment installed as part of the mechanical system. The cost of the plumbing system, which is covered by the Uniform Plumbing Code, is not to be included.

"(2) The mechanical permit fees are calculated as follows:

Cost of Mechanical System	Mechanical Permit Fee
$0 - $10,000	$48 for first $1000 plus $14 for each additional $1000 or fraction thereof, to and including $10,000
$10,001 - $50,000	$166 for first $10,000 plus $9 for each additional $1000 or fraction thereof, to and including $50,000
$50,001	$514 for first $50,000 plus $6 for each additional $1000 or fraction thereof.

(e) Section ~~108~~ 115 of the International Mechanical Code will be left as is for use by certified cities, counties, and towns. The department will use 50-60-109 and 50-60-110, MCA, in cases requiring prosecution, in lieu of Section ~~108~~ 115. When a person fails to submit required plans, obtain a permit, correct plans or comply with an order of the department, the department will, as authorized by 50-60-109, MCA, seek injunctive relief.

(f) Section ~~109~~ 113 of the IMC will be left as is for use by certified cities, counties, or towns, which by 50-60-303, MCA, must provide an appeal procedure. Cities, counties, and towns may use a board of appeals created in accordance with Section 113 of the IBC to serve as their boards of appeal. The department and state of Montana, however, will use the applicable provisions of the Montana Administrative Procedure Act in all cases of appeal, in lieu of Section ~~109~~ 113.

(g) through (j) remain the same.

(k) Subsection ~~1101.10~~ 1101.9, Locking access port caps, is modified by adding the following: "This subsection shall not apply to single-family dwellings."

(2) through (6) remain the same.

AUTH: 50-60-203, MCA
IMP: 50-60-102, 50-60-103, 50-60-109, 50-60-201, 50-60-203, 50-60-303, MCA

REASON: The proposed amendments to (1)(d), (e), (f), and (k) are necessary to update references to the International Mechanical Code.

24.301.173 INCORPORATION BY REFERENCE OF INTERNATIONAL FUEL GAS CODE (1) The department adopts and incorporates by reference the International Fuel Gas Code, 2021 edition, published by the International Code Council, IFGC, unless another edition is specifically stated, together with the following amendments:

(a) and (b) remain the same.

(c) Section ~~108 of the International Fuel Gas Code~~ 115, Violations, will be left as is for use by certified cities, counties, and towns. The department will use 50-60-109 and 50-60-110, MCA, in cases requiring prosecution, in lieu of Section ~~108~~ 115. When a person fails to submit required plans, obtain a permit, correct plans, or comply with an order of the department, the department will, as authorized by 50-60-109, MCA, seek injunctive relief.

(d) Section ~~109 of the IFGC~~ 113, Means of Appeal, will be left as is for use by certified cities, counties, or towns, who by 50-60-303, MCA, must provide an appeal procedure. Cities, counties, and towns may use the board of appeals created in accordance with Section 113 of the International Building Code to serve as the board of appeals. The department and state of Montana, however, will use the applicable provisions of the Montana Administrative Procedure Act in all cases of appeal, in lieu of Section ~~109~~ 113.

(e) through (6) remain the same.

AUTH: 50-60-203, MCA
IMP: 50-60-102, 50-60-103, 50-60-109, 50-60-201, 50-60-203, 50-60-303, MCA

REASON: The proposed amendments to (1)(c) and (d) are necessary to update references to the International Fuel Gas Code.

24.301.181 INCORPORATION BY REFERENCE OF INTERNATIONAL WILDLAND-URBAN INTERFACE CODE (IWUIC) (1) through (8) remain the same.

(9) Section 103, ~~Enforcement~~ Code Compliance Agency, is deleted in its entirety.

(10) Subsection ~~107.2~~ 106.2, Permits Required, retain the first sentence and delete the remainder of the subsection.

(11) through (24) remain the same.

AUTH: 50-60-203, MCA
IMP: 50-60-201, 50-60-202, 50-60-203, MCA

REASON: The proposed amendments to (9) and (10) are necessary to update references to the International Wildland-Urban Interface Code.

24.301.201 EXTENT OF LOCAL PROGRAMS (1) A city, county, or town, as provided by 50-60-102, MCA, may adopt codes that may not be more stringent than the codes that have been adopted by the department to cover buildings within their respective jurisdiction. However, as provided by 50-60-102, MCA, a city, county, or town may not cover residential buildings containing less than five dwelling units or their attached-to structures, any farm or ranch building and any private garage or private storage structure used only for the owner's own use unless the local legislative body or board of county commissioners by ordinance or resolution makes the building code specifically applicable to those structures. A city, county, or town may accomplish this by making its building codes applicable to nonexempt building construction within the respective jurisdiction.

(2) through (4) remain the same.

AUTH: 50-60-203, 50-60-302, 50-60-504, 50-60-603, MCA
IMP: 50-60-202, 50-60-203, 50-60-301, 50-60-302, 50-60-504, 50-60-603, MCA

REASON: The proposed amendment is necessary to comply with Senate Bill 406, 2023 Montana Laws, Chapter 411, which amended 50-60-301(2)(a), MCA, to state, "[e]xcept as provided in subsection (2)(b) a county, city, or town may not adopt or enforce a building code that is more stringent than the building code adopted by the department or as required by state law."

24.301.202 ADOPTION OF CODES (1) The codes adopted by cities, counties, and towns ~~must be the same as~~ may not be more stringent than those adopted by the department. However, cities, counties, or towns shall only adopt those codes that they are certified to enforce, which include plumbing, electrical, building, mechanical, medical gas, or the International Wildland-Urban Interface Code. ~~The codes adopted by cities, counties, and towns must be the same edition with the same amendments as those adopted by the department~~. Each time the department modifies the codes, cities, counties, and towns must modify their codes to conform to the department's codes. The department will notify cities, counties, and towns of these code modifications, at which time they will have 90 days from receipt of the notice to conform their codes. Cities, counties, and towns shall notify the department in writing when the updated codes have been adopted and are being enforced. Such notification shall include a copy of the appropriate code adoption ordinance(s) or administrative action.

(2) through (4) remain the same.

AUTH: 50-60-302, MCA
IMP: 50-60-301, 50-60-302, MCA

REASON: The proposed amendment is necessary to comply with Senate Bill 406, 2023 Montana Laws, Chapter 411, which amended 50-60-301(2)(a), MCA, to state, "[e]xcept as provided in (2)(b) a county, city, or town may not adopt or enforce a building code that is more stringent than the building code adopted by the department or as required by state law."

24.301.203 FUNDING OF CODE ENFORCEMENT PROGRAM (1) remains the same.

(2) Permit fees must ~~only~~ be used ~~for those costs related to~~ only for activities in support of reviewing and issuing a building permit and for building code enforcement activities, except for the building codes education fund as provided in 50-60-116, MCA, with building codes being only those codes adopted by the department in ARM Title 24, chapter 301, subchapters 1, 3, 4, and 15. It is not intended that permit fees be used to support fire departments, planning, zoning, or other activities, except to the extent that employees in those programs provide direct plan review, inspection, or other building code enforcement services for the city, county, or town's building code enforcement programs. Permit fees shall not be used to support the inspection of existing buildings for maintenance or for abatement of dangerous buildings.

(3) and (4) remain the same.

(5) Permit fees collected ~~in a given~~ each year in excess of the costs of administering city, county, or town building code enforcement programs shall be

placed in reserve to be used in subsequent years, provided that the reserve amount does not exceed the amount needed to support the building code enforcement programs for ~~12~~ 36 months. Fees must be reduced if necessary to avoid creation of excess reserve.

AUTH: 50-60-203, 50-60-302, MCA
IMP: 50-60-106, 50-60-302, MCA

REASON: The proposed amendment is necessary to implement House Bill 465, 2023 Montana Laws, Chapter 269, which amends 50-60-106, MCA, to clarify local governments' acceptable uses of building permit fees and increases the amount of local governments' reserve funds allowed for building code enforcement.

24.301.206 STAFF QUALIFICATION (1) and (2) remain the same.

(3) City, county, or town building ~~and mechanical~~ inspectors must be either inspector certified or have a construction related engineering or architecture degree or license. ~~A mechanical inspector may also be qualified by having a Montana plumbing license.~~

(4) City, county, or town mechanical inspectors must be either inspector certified, have a construction related engineering or architecture degree or license, or hold an active plumbing license.

(4) and (5) remain the same but are renumbered (5) and (6).

~~(6)~~ (7) Plumbing, electrical, mechanical, or building inspector certification may be obtained as part of a combination inspector certification to the extent the individual inspector certifications meet the requirements of ~~(5)~~ (6). In lieu of combination inspection certification, inspectors must hold commercial certification in a discipline to inspect commercial projects and must hold residential certification in a discipline if inspecting residential projects. Equivalent certifications may be approved by the department upon review and determination that the certification is substantially equivalent or exceeds the required certifications.

(7) through (9) remain the same but are renumbered (8) through (10).

AUTH: 50-60-203, 50-60-302, MCA
IMP: 50-60-302, MCA

REASON: The proposed amendment to (3) and adoption of new (4) are necessary to clarify the rules and prevent confusion in certification requirements for city, county, or town inspectors. Section (3) is amended to only address certification requirements for building inspectors. New (4) is necessary to clarify the requirements for mechanical inspectors. The proposed amendments to (6) are necessary to clarify residential and commercial inspector certification requirements and to allow for review and approval of substantially equivalent certification.

24.301.207 REPORTING REQUIREMENTS (1) remains the same.

(2) All certified jurisdictions, whether or not the program has changes to report, must file a report with the department on or before September at least every three years for the immediately preceding fiscal year. Information provided in the

report should correspond directly to each item listed in ~~(3)~~ (2)(a), and each item should be answered and presented separately from all other report information. An example report format is available to all Montana cities, counties, and towns upon request.

(a) The report must contain ~~all of~~ the following information:

(i) through (4) remain the same.

AUTH: 50-60-203, 50-60-302, MCA
IMP: 50-60-302, MCA

REASON: The proposed amendment to (2) and (2)(a) are necessary to correct an internal cross-reference within the rule and to clarify language.

24.301.351 MINIMUM REQUIRED PLUMBING FIXTURES (1) ~~The following table will be used~~ The department adopts Table 2902.1 of the 2021 version of the International Building Code to determine the minimum number of required plumbing fixtures to be installed in new buildings~~:~~. Table 2902.1 is available on the department's website, or by contacting the bureau to request a copy. The department explains and amends Table 2902.1 as follows:

[TABLE 2902.1 REMOVED]

a. The fixtures shown in Table 2902.1 are based on one fixture being the minimum required for the number of persons indicated or any fraction of the number of persons indicated. The number of occupants shall be determined by the building code.

(1)b. through (1)d. remain the same.

e. For ~~day nurseries, a maximum of one bathtub~~ child day care one bathtub or shower shall be required.

(1)f. remains the same.

~~g. Single-user unisex facilities shall include a urinal in food service establishments or any establishment that sells alcoholic beverages for on-site consumption.~~

(1)h. through (1)q. remain the same, but are renumbered (1)g. through (1)p.

~~r.~~ g. On an individual case-by-case basis the building official may approve an alternative source of potable drinking water, such as, but not limited to, a bottled water cooler, in lieu of a drinking fountain. Drinking fountains shall not be required in buildings with an occupant load of 30 or less.

r. Beauty salons must have a sink in accordance with ARM 24.121.1507.

AUTH: 50-60-203, 50-60-504, MCA
IMP: 50-60-203, 50-60-504, MCA

REASON: The proposed amendment to (1) is necessary to remove the printed version of Table 2902.1 of the IBC because the table was difficult to read and understand as printed in these rules. Table 2902.1 is adopted by reference, and the rule includes where to find the table online and in print. The proposed amendment

to Footnote e. is necessary because daycare facilities can have either a bathtub or shower. The proposed repeal of Footnote g. is necessary because urinals are not required in establishments that serve food or alcohol under the IBC, the IPC, or the UPC; urinals are optional in the codes, but not required. The proposed amendment to Footnote r., renumbered as Footnotes q., is necessary because Uniform Plumbing Code 415.2 does not require drinking fountains in occupancies with an occupant load less than 30. New Footnote r. is necessary because salons are required to have sinks under ARM 24.121.1507.

24.301.401 INCORPORATION BY REFERENCE OF NATIONAL ELECTRICAL CODE (1) remains the same.

(2) Subsection 210.8 (A),Dwelling Units, is amended to delete 250-volt receptacles.

(3) Subsection 210.8 (B), Other than Dwelling Units, is amended to delete 250-volt receptacles.

(2) and (3) remain the same, but are renumbered (4) and (5).

AUTH: 50-60-203, 50-60-603, MCA
IMP: 50-60-201, 50-60-203, 50-60-601, 50-60-603, MCA

REASON: The proposed amendment is necessary to remove references to 250-volt receptacles because this technology is not readily available in this state, and the technology adds a significant increase in cost that is not commensurate with the increase in safety. The bureau shall monitor and address requirements for this new technology as it becomes more readily available in this state.

24.301.481 CARNIVALS, FAIRS, OUTDOOR CONCERTS, AND SIMILAR AMUSEMENT ESTABLISHMENTS AND OTHER PUBLIC ASSEMBLIES OF A TEMPORARY NATURE (1) ~~Temporary electrical~~ Electrical power and lighting installations for amusement or public assembly may be permitted for a period not to exceed 30 days. The installation must comply with Article 525 of the National Electrical Code.

(2) and (3) remain the same.

AUTH: 50-60-203, 50-60-603, MCA
IMP: 50-60-201, 50-60-203, 50-60-603, 50-60-604, MCA

REASON: The proposed amendment is necessary to remove the term "temporary power" which has a separate and distinct meaning in building code laws and regulations.

24.301.903 BUILDING ACCESSIBILITY (1) Section 1109, Special Occupancies, IBC, is amended to clarify that not every restroom installed in a building or structure is required to be accessible as long as the required facilities are accessible and reasonably available from all areas of the primary function areas of the building. Primary function area means an area of a building or facility in which a major activity for which the building or facility is designed is carried out.

(a) Subsection ~~1109.1~~ 1110.1, General, is amended by adding the following: "When buildings or portions of buildings are required to be accessible, required building facilities shall be accessible as provided in this section. A person or entity may not be required to meet fully the accessibility requirements for buildings, in those rare circumstances where the person or entity can demonstrate that it is structurally impracticable, due to unique characteristics of terrain and/or not practicable in relation to the proposed usage of the building, as determined on a case-by-case basis, at the discretion of the building official."

(b) Subsection ~~1109.2~~ 1110.2, Toilet and Bathing Facilities, is amended to read as follows: "Required toilet rooms and bathing facilities shall be accessible. Where a floor level is not required to be connected by an accessible route, the only toilet rooms or bathing facilities provided within the facility shall not be located on the inaccessible floor. At least one of each type of fixture, element, control, or dispenser in each accessible toilet room and bathing facility shall be accessible."

(i) through (f) remain the same.

AUTH: 50-60-203, MCA
IMP: 50-60-201, 50-60-214, MCA

REASON: The proposed amendment is necessary to update references to the IBC.

24.301.904 SITE ACCESSIBILITY (1) Section 50-60-213, MCA, requires that construction of a public building or alteration of primary function areas of a public building, which have not been issued a legal building permit prior to October 1, 1997, include compliance with the requirements of the IBC and the requirements established by 2017 ICC/ANSI A117.1, Accessible and Usable Buildings and Facilities, which include the building site, parking areas, passenger loading zones, private sidewalks and the accessibility from adjacent sidewalks, public streets and public transportation stops. Existing public buildings that are not undergoing an alteration to a primary function area are not subject to the accessibility requirements. Primary function area means an area of building or facility in which a major activity for which the building or facility is designed is carried out.

(2) remains the same.

(3) Sections 1104, Accessible Route, and 1106, Parking and Passenger Loading Facilities, of the IBC are each amended by addition of the following: "A person or entity may not be required to meet fully the accessible exterior route requirements for new buildings or alterations to existing buildings, where the person or entity can demonstrate that due to unique characteristics of the terrain, it is structurally impractical to fully comply, as determined on a case-by-case basis, at the discretion of the building official. Full compliance may be considered structurally impractical only in those rare circumstances when the unique characteristics of the terrain prevent the incorporation of accessibility features. The person or entity shall comply with the accessible facilities requirements to the extent that compliance is not structurally impractical."

(4) and (5) remain the same.

(6) Each new building or alteration to an existing building which provides off street parking shall provide at least one accessible parking space with required

additional parking spaces as established in Table ~~1106.1~~ 1106.2, Accessible Parking Spaces, and Section 1106, Parking and Passenger Loading Facilities. One van accessible parking space shall be provided for every eight accessible parking spaces, or fraction thereof. If only one accessible parking space is required, the space shall be a van accessible parking space.

AUTH: 50-60-203, MCA
IMP: 50-60-201, 50-60-213, MCA

REASON: The proposed amendment is necessary to update references to the IBC.

5. The rules to be amended and transferred are as follows, new matter underlined, deleted matter interlined:

24.301.501 (24.301.1201) APPLICABILITY OF STATE STATUTES AND ADOPTED ADMINISTRATIVE RULES (1) These rules and standards are based on the provisions of Title 50, Chapter 60, MCA, ~~in order to implement, interpret and make specific and otherwise~~ to carry out the statutory provisions relating to the manufacture and sale of factory-built buildings and components thereof.

(2) Factory-built buildings shall meet the requirements of the following nationally recognized construction standards:

(a) the International Building Code as adopted and amended by ARM 24.301.131 or, as applicable, the International Residential Code as adopted and amended by ARM 24.301.154;

(b) the National Electrical Code as adopted and amended by ARM 24.301.401;

(c) the International Mechanical Code as adopted and amended by ARM 24.301.172;

(d) the Uniform Plumbing Code as adopted and amended by ARM 24.301.301;

(e) the International Energy Conservation Code as adopted and amended by ARM 24.301.161;

~~(f) the International Swimming Pool and Spa Code as adopted by ARM 24.301.175; and~~

~~(g)~~ (f) the International Wildland-Urban Interface Code as adopted and amended by ARM 24.301.181~~.~~ ;

(g) the International Code Council and Modular Building Institute 1200 Standard for Off-Site Construction: Planning, Design, Fabrication and Assembly as adopted and amended by [NEW RULE I (24.301.1203)]; and

(h) the International Code Council and Modular Building Institute 1205 Standard for Off-Site Construction: Inspection and Regulatory Compliance as adopted and amended by [NEW RULE I (24.301.1203)].

(3) The requirement listed in 50-60-402~~(1)~~, MCA, for new factory-built buildings applies to all new units, whether offered for sale, lease or rent, which are first utilized in the state of Montana, regardless of the unit's point of origin or route of delivery. A person cannot arrange to accept delivery of a new unit ~~in~~ at an out-of-

state location ~~in order~~ to avoid the need for a state of Montana insignia of approval on the unit.

AUTH: 50-60-203, 50-60-401, MCA
IMP: 50-60-201, 50-60-203, 50-60-401, 50-60-402, MCA

REASON: The proposed amendments are necessary to clarify that the department has adopted and amended the requirements for factory-built buildings in these rules. Subsection (2)(f) is removed because the International Swimming Pool and Spa Code does not apply to factory-built buildings. The department proposes the adoption of additional standard codes for factor-built buildings in NEW RULE I: the International Code Council and Modular Building Institute (ICC/MBI) 1200 Standard for Off-Site Construction: Planning, Design, Fabrication and Assembly; and the ICC/MBI 1205 Standard for Off-Site Construction: Inspection and Regulatory Compliance. There is a reasonable necessity to amend the implementing statutes to include 50-60-402, MCA, because it states that factory-built buildings must comply with rules set by the department.

24.301.511 (24.301.1205) DEFINITIONS (1) "Bureau" means the Building and Commercial Measurements Bureau of the Department of Labor and Industry.

~~(2) "Components" means the prefabricated wall, floor, ceiling, or roof panels or pre-cut building kits or similar units of construction or any combination of such units.~~

~~(3) "Engineer" means a professional engineer who, by reason of special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design, acquired the right to practice engineering as attested by his registration as a professional engineer.~~

~~(4)~~ (2) "Factory-built building" ~~means a factory assembled structure or structures equipped with the necessary service connections, but not made so as to be readily movable as a unit or units and designed to be used with a permanent foundation~~ has the meaning provided in 50-60-101, MCA, and includes "Industrialized Building" and "Industrialized Housing" as defined in chapter two of the ICC/MBI 1205 Standard.

~~(5) "Insignia" means a seal or label issued by the bureau to indicate compliance on the date of issuance with these rules and Title 50, chapter 60, MCA.~~

~~(6) "Listing agency" means an agency approved by the bureau which is in the business of listing or labeling, and which maintains a periodic inspection program on current production of listed models, and which makes available at least an annual published report of such listing in which specific information is included and that the product has been tested to approved standards and found safe for use in the specified manner.~~

~~(7) "Local enforcement agency" means the zoning or building department of a city, town, or county.~~

~~(8) "Alteration or conversion" means the replacement, addition, modification, or removal of any equipment or installations which may affect construction, fire safety, occupancy, plumbing, heat-producing, or electrical systems or the functions thereof, of units subject to these rules.~~

~~(9) "Model" means a specific design width of factory-built building or components thereof as designed by the manufacturer.~~

~~(10) "Model group" means two or more manufacturer-designed factory-built buildings or components thereof, which constitute one model.~~

(3) "Manufactured home" has the meaning provided in the state's property tax code, 15-24-201, MCA.

(4) "Mobile home" has the meaning provided in the state's property tax code, 15-24-201, MCA.

(11) remains the same but is renumbered (5).

~~(12) "Recreational vehicles" has the same meaning as in 50-60-101, MCA.~~

~~(13) "System" means an arrangement or method based on maximum capacity for structural, plumbing, heating, or electrical installations.~~

~~(14) "Testing agency" means an organization, which is:~~

~~(a) in the business of testing equipment and installations;~~

~~(b) qualified and equipped for such experimental testing;~~

~~(c) not under the jurisdiction or control of any manufacturer or supplier for any affected industry;~~

~~(d) making available a published report in which specific information is included stating that the equipment and installations tested were found to meet the applicable standards in the specified manner;~~

~~(e) conducting tests computed under the control of a licensed professional engineer;~~

~~(f) approved by the bureau.~~

~~(15) "Third party certification and inspection agency" means an agency which:~~

~~(a) inspects and certifies, in lieu of state inspectors, that any unit conforms to the requirements and standards set forth herein; and~~

~~(b) is not under the control or jurisdiction of any supplier, manufacturer, or dealer, except by a contract for quality control and/or inspections of units for conforming to the requirements and standards set forth herein.~~

~~(16)~~ (6) "Unit" ~~means a factory-built building and components thereof~~ has the same meaning as "module" as defined in chapter two of the ICC/MBI 1200 Standard and the ICC/MBI 1205 Standard.

AUTH: 50-60-203, 50-60-401, MCA
IMP: 50-60-203, 50-60-401, MCA

REASON: The proposed amendments repealing the definitions for (2), (5), (6), (7), (8), (9), (10), (13), (14) and (15) are necessary because the terms are defined in the ICC/MBI codes proposed for adoption in NEW RULE I. The proposed amendment repealing (3) is necessary because "professional engineer" is defined by the Board of Professional Engineers and Professional Land Surveyors in 37-61-101, MCA, and this definition does not amplify or clarify the existing statutory definition. The proposed amendment repealing (12) is necessary because the definition is duplicative of 50-60-191, MCA. The proposed amendments to renumbered (2) and (6) are necessary to incorporate definitions found in the ICC/MBI codes proposed for adoption in NEW RULE I. Finally, the proposed amendments to renumbered (3) and

(4) adopting the property tax definitions for "mobile home" and "manufactured home" found in Title 15, chapter 24, MCA, are necessary to simplify and standardize definitions of common terms across code sections and administrative rules.

24.301.513 (24.301.1207) USE OF MOBILE HOMES AND RECREATIONAL VEHICLES FOR COMMERCIAL OR BUSINESS OCCUPANCY PROHIBITED–EXCEPTION (1) remains the same.

(2) These units do not meet code requirements for commercial or business occupancy and are therefore prohibited for these types of uses. Except as provided in (4), manufactured ~~(mobile)~~ homes, mobile homes, and recreational vehicles shall not be utilized for any occupancy other than as a single-family dwelling, whether for transient stay or longer periods. "Transient stay" means a guest staying at one location for 30 days or less.

(3) remains the same.

(4) Units used as temporary offices by manufactured ~~(mobile)~~ or mobile home ~~dealers~~ retailers, on the premises (lot) where ~~said~~ the units are sold, would not fall into this category provided the unit utilized as an office:

(a) through (f) remain the same.

AUTH: 50-60-203, 50-60-401, MCA
IMP: 50-60-203, 50-60-401, 50-60-402, MCA

REASON: The proposed amendments to (2) and (4) are necessary because the terms "manufactured home" and "mobile home" have separate definitions in the proposed amendments to current ARM 24.301.511. The additional proposed amendment to (4) is necessary because the ICC/MBI codes proposed for adoption in NEW RULE I refer to "retailer" rather than "dealer." There is a reasonable necessity to amend the implementing statutes to include the authorizing statutes 50-60-203 and 50-60-401, MCA, to maintain consistency within the rules.

24.301.515 (24.301.1211) BUREAU INSPECTORS (1) All ~~inspectors of the~~ bureau inspectors, meaning those employed or contracted by the bureau, shall have a working knowledge of the specified editions of the adopted model codes and shall not be under the control of any listing agency, testing agency, third-party inspection agency, ~~dealer~~ retailer, or manufacturer.

AUTH: 50-60-203, 50-60-401, MCA
IMP: 50-60-203, 50-60-401, MCA

REASON: The proposed amendments are necessary to clarify the term "bureau inspectors," and to correct punctuation. The additional proposed amendment is necessary because the ICC/MBI codes proposed for adoption in NEW RULE I refer to "retailer" rather than "dealer."

24.301.523 (24.301.1235) RECIPROCITY (1) Any unit manufactured in a reciprocal state which has been reviewed as meeting the standards of that state shall be deemed to meet the standards of the state of Montana. Reciprocal status

shall be granted to other states at the discretion of the bureau. In addition to the insignia of the reciprocal state, a Montana insignia of approval is necessary on all units manufactured or offered for sale within the state of Montana.

(2) and (3) remain the same.

AUTH: 50-60-203, 50-60-401, MCA
IMP: 50-60-203, 50-60-401, 50-60-403, MCA

REASON: The proposed amendments are necessary because the rules refer to "insignia of approval" to indicate the significance of the insignia. It is reasonably necessary to amend the referenced implementing statutes because 50-60-403, MCA, allows the department to recognize another state's approval agency "to determine if approved models of factory-built buildings are being constructed in accordance with the approved plans and specifications for those models."

24.301.542 (24.301.1233) PLAN REVIEW ~~TERMINATION~~ REVOCATION

(1) A plan review issued by the bureau shall remain in effect through December 31 of the year following the original year of approval and through December 31 of each subsequent year of renewal as established in ~~ARM 24.301.550~~ [NEW RULE IX (24.301.1231)] or until withdrawn or revised by the manufacturer or until revoked by the bureau.

(2) A plan review will be revoked by the bureau upon:

(a) the department's adoption of a different version of codes applicable to that ~~particular~~ review;

(b) and (c) remain the same.

(3) Manufacturers will be allowed 90 days from the effective date of a new code to purchase insignias of approval for models approved under previous codes.

AUTH: 50-60-203, 50-60-401, MCA
IMP: 50-60-203, 50-60-401, 50-60-402, MCA

REASON: The proposed amendment is necessary to update and clarify language and specify the deadline for manufacturers to purchase insignia of approval for model approved under previous codes. The implementation statutes are proposed to be updated to include all applicable statutes.

24.301.565 (24.301.1261) IN-STATE PLAN AND SYSTEM REVIEW FEES FOR FACTORY-BUILT BUILDINGS (1) The following are the plan and system review fees to be charged by the department:

(a) Quality control manual review: $20

(b) Third-party inspection agency application review: $20

(b) through (f) remain the same but are renumbered (c) through (g).

~~(g)~~ (h) Plan renewal: $100

(i) ~~$100 for each set of documents describing a unit which is to be utilized during the next approved plan period. Obsolete plans or specifications are to be removed at the time of plan renewal by written notification at no additional cost.~~ Any

approved units that will be used during the next approved plan period must be renewed.

(ii) Units that are not renewed by the December 31 deadline shall expire, and a new application must be submitted to the bureau for review.

AUTH: 50-60-104, 50-60-203, 50-60-401, MCA
IMP: 50-60-104, 50-60-203, 50-60-401, 50-60-403, MCA

REASON: The proposed amendment is necessary to update language. It is reasonably necessary to amend the referenced implementing statutes because 50-60-403, MCA, allows the department to recognize a third-party inspection agency "to determine if approved models of factory-built buildings are being constructed in accordance with the approved plans and specifications for those models." Pursuant to 2-4-302, MCA, the department estimates that the new third-party inspection agency application review fee of $20 will affect approximately zero or one new applicant(s) per year, resulting in an increase in fee income of between zero and $20 per year for the department. There are currently 14 approved third-party inspection agencies listed with the department, the list has remained consistent for several years, and the department does not anticipate a rapid change in the inspection agencies in the near future. Furthermore, the department does not anticipate a change in the plan renewal fee income because the fee language is merely reworded, and not a change in fees.

24.301.567 (24.301.1265) MISCELLANEOUS FEES (1) Field technical service fees are as follows:

(a) ~~$45, provided that such service is not in excess of~~ Forty-five dollars for services up to one hour in duration~~.~~; and

(b) Twenty-five dollars for every additional 30 minutes, or fractional ~~part~~ amount thereof, ~~in excess of one hour~~ after the first hour of service.

(2) Out-of-state manufacturers may be subject to at least one on-site review per year. They shall pay the following on-site review fee which shall be the same as those to be paid by manufacturers who request inspections:

(a) ~~Requested out-of-state inspection or field technical service fee -~~ total travel cost based on published air fare, or equivalent rate, between Helena, Montana, and the point of inspection, plus necessary supplemental surface transportation, reimbursement for food and lodging consistent with state of Montana out-of-state travel per diem and mileage rates under 2-18-501, MCA;~~,~~ and

(b) inspection fees of $45 per hour, not to exceed eight hours in any one day.

AUTH: 50-60-104, 50-60-203, 50-60-401, MCA
IMP: 50-60-104, 50-60-203, 50-60-401, MCA

REASON: The proposed amendments are necessary to clarify and simplify language, and to clarify that the state of Montana out-of-state travel per diem and mileage rates apply.

6. The new rules proposed to be adopted are as follows:

NEW RULE I (24.301.1203) INCORPORATION BY REFERENCE OF INTERNATIONAL CODE COUNCIL AND MODULAR BUILDING INSTITUTE STANDARDS (1) The department adopts and incorporates by reference the International Code Council and Modular Building Institute 1200 Standard for Off-site Construction: Planning, Design, Fabrication and Assembly, 2021 edition (ICC/MBI 1200 Standard).

(2) The department adopts and incorporates by reference the International Code Council and Modular Building Institute 1205 Standard for Off-site Construction: Inspection and Regulatory Compliance, 2021 edition, (ICC/MBI 1205 Standard).

(3) A copy of the off-site standards may be obtained from the International Code Council at www.ICCsafe.org.

AUTH: 50-60-203, 50-60-401, MCA
IMP: 50-60-201, 50-60-203, 50-60-401, 50-60-402, MCA

REASON: The proposed new rule is necessary because the department is proposing the adoption of the national standards for regulation of factory-built buildings to provide clear guidance of requirements for manufacturers and inspectors of factory-built structures. The adoption of ICC/MBI codes for factory-built buildings updates, clarifies, and simplifies the department's inspection and approval processes for factory-built buildings. The adoption of ICC/MBI codes also helps to standardize factory-built building regulations across jurisdictions. Furthermore, adoption of the ICC/MBI code in these rules allows the department to amend the regulations as necessary to best serve the state of Montana.

NEW RULE II (24.301.1213) APPROVAL OF THIRD-PARTY INSPECTION AGENCY (1) Third-party inspection agencies shall meet the requirements of Section 401 of the ICC/MBI 1205 Standard as adopted by the department.

(2) Third-party inspection agencies shall apply on an application form supplied by the department and include the third-party inspection agency fee required by [ARM 24.301.565 (24.301.1261)].

(3) Once approved by the department, the third-party inspection agency will be listed as an approved third-party agency in the state of Montana.

AUTH: 50-60-203, 50-60-401, MCA
IMP: 50-60-203, 50-60-401, 50-60-403, MCA

REASON: The proposed new rule is necessary to clarify how third-party inspection agencies gain approval by the department under the ICC/MBI code standards proposed for adoption in NEW RULE I.

NEW RULE III (24.301.1215) INSPECTION OF RETAILER (1) Bureau inspectors are authorized to enter any premises in Montana where units are sold or offered for sale with or without prior announcement. The bureau inspector may make visual inspections as necessary to determine whether units are being sold or offered for sale with the required insignia of approval.

AUTH: 50-60-203, 50-60-401, MCA
IMP: 50-60-203, 50-60-401, 50-60-402, MCA

REASON: The proposed new rule is necessary because it replaces ARM 24.301.518, proposed for repeal. The new rule is necessary to update and clarify language, and the ICC/MBI codes proposed for adoption in NEW RULE I refer to "retailer" rather than "dealer."

NEW RULE IV (24.301.1217) MANUFACTURER REGISTRATION (1) Each manufacturer shall obtain approval from the department and be subject to Section 601 of the ICC/MBI 1205 Standard as adopted by the department.

(2) Manufacturers applying for model plan review per [NEW RULE V (24.301.1221), once approved, will be listed as an approved manufacturer in the state of Montana.

AUTH: 50-60-203, 50-60-401, MCA
IMP: 50-60-203, 50-60-401, 50-60-402, MCA

REASON: The proposed new rule is necessary because it clarifies the requirements for manufacturer approval, and specifies the applicable ICC/MBI code standards proposed for adoption in NEW RULE I.

NEW RULE V (24.301.1221) APPLICATION FOR MODEL PLAN REVIEW

(1) Any manufacturer of modular buildings or modular building components shall apply to the bureau for plan review of a model or model group before construction.

(2) The application for model plan review shall include the following:

(a) the applicable plan, quality assurance manual, and system inspection fees required by [ARM 24.301.565 (24.301.1261)];

(b) the quality assurance manual as defined in [NEW RULE VI (24.301.1223)];

(c) the approved third-party inspection agency responsible for on-site inspections;

(d) all applicable plan approval items provided for in chapter 3 of the ICC/MBI 1205 Standard; and

(e) the first page of the construction document shall include the wind load (Vult), construction type, seismic design category, and ground snow load.

(3) If the permanent site location of the building is unknown (nonsite-specific), the building must meet the following structural design loads:

(a) Wind load of 115 MPH.

(b) Seismic design category of D.

(c) Snow load of 30 psf.

AUTH: 50-60-203, 50-60-401, MCA
IMP: 50-60-203, 50-60-401, 50-60-402, MCA

REASON: The proposed new rule is necessary because it replaces ARM 24.301.535, proposed for repeal. The new rule references the new code proposed for adoption in NEW RULE I, including the list of items required for plan review found in chapter 3, section 303 of the ICC/MBI 1205 Standard. "Nonsite-Specific" is a term defined in chapter 2, section 202, of the ICC/MBI Standards 1200 and 1205 as "[a] building for which the permanent site location is unknown at the time of construction[;]" in this case, the proposed loads would be required to ensure that the building could withstand loads commonly experienced in the state of Montana.

NEW RULE VI (24.301.1223) IN-PLANT QUALITY ASSURANCE MANUAL

(1) The manufacturer shall submit a quality assurance manual outlining a program of quality assurance prior to or with the manufacturer's first request for plan review, including the quality assurance manual review fee required by [ARM 24.301.565 (24.301.1261)].

(2) The quality assurance manual must include all applicable items as listed in chapter 5 of the ICC/MBI 1205 Standard and be reviewed and approved by the bureau prior to the approval of plan review.

(3) When the quality assurance manual is revised, one copy of the revised manual shall be submitted to the bureau for review, and the manufacturer shall include the quality assurance manual review fee required by [ARM 24.301.565 (24.301.1261)].

AUTH: 50-60-203, 50-60-401, MCA
IMP: 50-60-203, 50-60-401, 50-60-402, MCA

REASON: The proposed new rule is necessary because it replaces ARM 24.301.543, proposed for repeal. The proposed new rule reflects the language contained in the applicable ICC/MBI code standards proposed for adoption in NEW RULE I, which refers to "quality assurance manual" rather than "quality control manual." Requirements for the quality assurance manual are now found in chapter 5 of the ICC/MBI 1205 Standard. The new rule adds the requirement that manufacturers must submit a revised manual to the bureau for review with the applicable fee. Section (3) regarding the revised quality assurance manual is transferred from ARM 24.301.545(3), proposed for repeal in this notice.

NEW RULE VII (24.301.1225) NONCONFORMING APPLICATION AND PLANS (1) If the submitted applications or plans do not conform with these rules, the bureau shall send the applicant a written plan correction notice within 30 business days of the bureau's receipt of the application or plans. The plan correction notice shall contain the specific corrections required for approval of the application or plans.

(2) An applicant shall have 60 days from the date of service of the bureau's plan correction notice to submit corrections to the bureau.

(3) Corrected plans received more than 60 days after the date of service of the bureau's plan correction notice shall be processed as a new application and shall include the fees for a new application required by [ARM 24.301.565 (24.301.1261)].

AUTH: 50-60-203, 50-60-401, MCA
IMP: 50-60-203, 50-60-401, 50-60-402, MCA

REASON: The proposed new rule is necessary because it replaces ARM 24.301.540, proposed for repeal. The proposed new rule provides a clear process for applications or plans that require additional information for approval. The proposed amendment provides notice of the process and timelines for the public, manufacturers, and department staff.

NEW RULE VIII (24.301.1227) CHANGES TO REVIEWED PLANS

(1) Where the manufacturer proposes changes in the construction, plumbing, mechanical, or electrical equipment or installations, or where these rules are amended to necessitate such change, an application for revision and one set of supplemental detailed plans and specifications of such changes shall be submitted to the bureau for plan review and comparison. Plans shall include the plan resubmission or revision fee(s) required by [ARM 24.301.565 (24.301.1261)].

(a) When the supplemental details do not constitute a new model, the supplemental details will be filed with and become part of the existing plan review.

(b) Where the supplemental details constitute a model change, application for plan review will be required as for a new model.

(2) A model designation may be changed or added by filing an amended application and including plan and system review fee(s) required by [ARM 24.301.565 (24.301.1261)].

AUTH: 50-60-203, 50-60-401, MCA
IMP: 50-60-203, 50-60-401, 50-60-402, MCA

REASON: The proposed new rule is necessary because it replaces (1) and (2) of ARM 24.301.545, proposed for repeal. The new rule is necessary to simplify and clarify language to explain the process when a change to reviewed plans constitutes a new model, and when the change does not.

NEW RULE IX (24.301.1231) PLAN RENEWAL (1) Except as established in [ARM 24.301.542 (24.301.1233)] for original plan approvals, the manufacturer shall apply for plan renewal for the following year prior to the December 31 expiration date of each year shown on the permit. At the time of renewal, plans which have not been changed do not require the submission of plans.

(2) If any changes have been made to the plans, the plans cannot be renewed; a new application and updated plans must be submitted to the bureau, including the applicable fees required by [ARM 24.301.565 (24.301.1261)].

(3) If the department adopts new versions of codes applicable to the plans, then renewal of existing plans reviewed under the previous codes are not allowed, and the manufacturer must send a new application and fees for plan review and approval of the model demonstrating compliance with the new codes.

AUTH: 50-60-203, 50-60-401, MCA
IMP: 50-60-203, 50-60-401, 50-60-402, MCA

REASON: The proposed new rule is necessary to replace ARM 24.301.550, proposed for repeal. The new rule clarifies that a change to the adopted codes does not allow for renewal of plan approval. The new rule updates and clarifies the language explaining that a change to the adopted codes requires a manufacturer to resubmit plans and reapply for insignia of approval.

NEW RULE X (24.301.1237) TRANSMISSION OF REVIEW MATERIALS TO RECIPROCAL STATE (1) Plan review, panelized system reviews, and/or quality assurance manual reviews may be transmitted to a reciprocal state for approval in the following manner:

(a) A manufacturer shall make a written request to the bureau for transmittal of the plan reviews, panelized system reviews, and/or quality assurance manual reviews to a specific reciprocal state.

(b) The request shall designate the models and/or system review numbers to be transmitted.

(c) Once the request is complete, the bureau shall transmit the review to the reciprocal state electronically.

(2) The reciprocal state shall follow that state's procedure for processing and approving the review materials, including notifying the manufacturer of approval or rejection of the review materials.

AUTH: 50-60-203, 50-60-401, 50-60-402, MCA
IMP: 50-60-203, 50-60-401, 50-60-402, MCA

REASON: The proposed new rule is necessary because it replaces ARM 24.301.544, proposed for repeal. The new rule clarifies how a manufacturer may request review of materials by a reciprocal state by contacting the bureau. The new rule clarifies that the reciprocal state shall follow that state's process for plan review and approval. The new rule is necessary to update and clarify language, and the ICC/MBI codes proposed for adoption in NEW RULE I refer to "panelized system" rather than "system."

NEW RULE XI (24.301.1241) INSIGNIA OF APPROVAL – WHEN REQUIRED (1) All units manufactured or delivered prior to sale or sold or offered for sale in Montana shall bear an insignia of approval and if applicable the insignia of a reciprocal state or the certified third-party inspection agency. Each insignia of approval shall be assigned and affixed to a specific unit. Assigned insignia of approval are not transferable. The insignia of approval shall remain the property of the bureau and may be revoked or confiscated by the bureau in the event of violation of the conditions of approval.

(2) No person or persons may remove or cause to be removed an insignia of approval without prior authorization of the bureau.

AUTH: 50-60-203, 50-60-401, MCA
IMP: 50-60-203, 50-60-401, 50-60-402, 50-60-403, MCA

REASON: The proposed new rule is necessary because it replaces ARM 24.301.557 and 24.301.560(2), proposed for repeal. The new rule clarifies and simplifies language and adds the term "insignia of approval" to indicate the significance of insignia.

NEW RULE XII (24.301.1243) APPLICATION FOR INSIGNIA PURSUANT TO PLAN REVIEW (1) The unit manufacturer shall apply for an insignia of approval for each individual unit manufactured. The application shall be submitted to the bureau on the proper bureau form, including the insignia fees as required by [NEW RULE XVI (24.301.1263)]. The application shall include the approved model number and the serial number(s) for each individual unit the insignia(s) of approval will be applied to.

(2) The manufacturer producing the model shall receive the insignia of approval from the bureau and will be responsible for attaching the insignia of approval to each unit.

(3) An insignia of approval obtained pursuant to this rule shall be utilized within 12 months of the date of issuance. Any insignia of approval not utilized within 12 months of the date of issuance is deemed void. No refund or credit shall be issued for void insignia of approval.

AUTH: 50-60-203, 50-60-401, MCA
IMP: 50-60-201, 50-60-203, 50-60-401, 50-60-402, MCA

REASON: The proposed new rule is necessary because it replaces ARM 24.301.558, proposed for repeal. The proposed new rule adds the term insignia "of approval" to indicate the significance of insignia. The new rule also reflects the definition of "insignia" found in Section 202 of the ICC/MBI codes proposed for adoption in NEW RULE I: "insignia" is defined as "'[t]he approved form of certification issued by the authority having jurisdiction to the manufacturer to be attached to the modular building, modular component or panelized system indicating that it has been constructed to meet or exceed the applicable building code requirements." The new rule further reflects the bureau's actual process of sending insignia directly to the manufacturer, rather than sending the insignia through a third-party inspection agency.

NEW RULE XIII (24.301.1245) EFFECT OF INSIGNIA OF APPROVAL (1) All units bearing the insignia of approval or the insignia of a reciprocal state pursuant to the provisions of [NEW RULE XI (24.301.1241)] through [NEW RULE XV (24.301.1249)] shall be acceptable as meeting the requirements of Title 50, chapter 60, MCA, throughout the state of Montana without further inspection or fees except for zoning, utility connections, and foundation permits as required by the authority having jurisdiction.

(2) Any new unit delivered to the state of Montana, either to a sales lot or placed on location, that does not bear an insignia of approval pursuant to [NEW RULE XI (24.301.1241)], is considered in violation of Title 50, chapter 60, MCA. The

unit shall be treated as an existing building and required to meet all requirements of the authority having jurisdiction.

AUTH: 50-60-203, 50-60-401, MCA
IMP: 50-60-203, 50-60-401, 50-60-402, 50-60-403, MCA

REASON: The proposed new rule is necessary because it replaces ARM 24.301.564, proposed for repeal. The new rule includes updated and clarified language, including referring to insignia as "insignia of approval" to indicate the significance of the insignia.

NEW RULE XIV (24.301.1247) LOST, DAMAGED, OR VOID INSIGNIA (1) If an insignia of approval becomes lost, damaged, or void, the manufacturer shall notify the bureau, in writing, as soon as practicable.

(2) Upon notification from the manufacturer that an insignia of approval has been damaged or lost, the bureau shall send replacement insignia of approval to the manufacturer. Void insignia of approval will not be replaced; the manufacturer must apply for new insignia of approval for the unit.

(3) No duplicate insignia of approval shall be used. All damaged or void insignia must be returned to the bureau or destroyed. If a lost insignia is later found, it must be returned to the bureau or destroyed.

AUTH: 50-60-203, 50-60-401, MCA
IMP: 50-60-203, 50-60-401, 50-60-402, MCA

REASON: The proposed new rule is necessary because it replaces ARM 24.301.561, proposed for repeal. The bureau can now replace lost or damaged insignia at little to no cost because insignia are now electronic. The rule also clarifies the procedure for void insignia. The term "approval" is added to the term insignia to indicate significance of the insignia.

NEW RULE XV (24.301.1249) ALTERATION OR REVISION OF A UNIT BEARING INSIGNIA (1) Any manufacturer or retailer proposing to alter or revise a unit bearing insignia of approval prior to or during the installation shall apply to the bureau. An application shall include:

(a) make and model of the unit;

(b) serial number;

(c) bureau insignia number;

(d) complete description of the work to be performed, together with plans and specifications when required;

(e) location of the unit where work is to be performed;

(f) alteration or revision fee as required by [ARM 24.301.565 (24.301.1261)]; and

(g) name and address of the manufacturer or retailer of the unit.

(2) Upon completion of the alteration or revision, the applicant shall request the bureau to perform an inspection, and include the applicable fees as required by [ARM 24.301.565 (24.301.1261)].

(3) The following changes shall not be considered alterations or revisions:

(a) repairs with approved component parts;

(b) conversion of listed fuel burning appliances in accordance with the terms of their listing;

(c) adjustment and maintenance of equipment; and

(d) replacement of equipment in kind.

(4) If alterations or revisions made do not meet the requirements of this rule, the bureau shall consider any insignia of approval and related review to be void.

AUTH: 50-60-203, 50-60-401, MCA
IMP: 50-60-203, 50-60-401, 50-60-402, MCA

REASON: The proposed new rule is necessary because it combines and replaces ARM 24.301.563 and 24.301.562, proposed for repeal. The new rule includes updated and clarified language, including referring to insignia as "insignia of approval" to indicate the significance of the insignia, and referring to "revision" of an approved unit rather than "conversion."

NEW RULE XVI (24.301.1263) INSIGNIA OF APPROVAL FEES (1) The fee for an insignia of approval for a factory-built building is $40 per section. This fee covers the building construction, plumbing, electrical, and mechanical.

AUTH: 50-60-104, 50-60-203, 50-60-401, MCA
IMP: 50-60-104, 50-60-203, 50-60-401, MCA

REASON: The proposed new rule is necessary because it replaces ARM 24.301.566, proposed for repeal. The new rule simplifies and clarifies language.

NEW RULE XVII (24.301.1271) NOTICE OF VIOLATIONS (1) When an inspection reveals that a unit is in violation of any provisions of Title 50, chapter 60, MCA, or the applicable rules, the bureau shall send the manufacturer a written notice of violation. Upon service of the notice of violation, the bureau shall post a prohibited sales notice on the affected unit(s). The notice of violation shall contain the following:

(a) the specific statute, rule, or codes violated for each unit;

(b) the corrections required for approval;

(c) the 14-day deadline to inform the bureau of the intent to correct the violations or request for hearing; and

(d) a deadline for informing the bureau of the completed corrections pursuant to (3)(a).

(2) A manufacturer who has received a notice of violations shall not move or cause to be moved unit(s) until the bureau is notified of its destination or disposition. If the unit is posted with a prohibited sales notice, the notice shall not be removed until authorized by the bureau.

(3) Within 14 days of the bureau's service of the notice of violation, the manufacturer may:

(a) inform the bureau in writing of the manufacturer's intent to correct the violations identified in the notice of violations. The manufacturer shall then inform the bureau in writing when the corrections have been completed and proceed with reinspection pursuant to (4); or

(b) request a hearing pursuant to [NEW RULE XVIII (24.301.1273)].

(4) Upon the bureau's receipt of the manufacturer's notice of corrections, the units shall be reinspected, and the manufacturer shall pay the appropriate fees as required by [ARM 24.301.565 (24.301.1261)] through [ARM 24.301.5695 (24.301.1265)].

(5) If a manufacturer receives a notice of violation, and the manufacturer does not request a hearing or correct the violations and inform the bureau of the corrections within the allotted time, the bureau may confiscate the insignia of approval.

AUTH: 50-60-105, 50-60-203, 50-60-401, MCA
IMP: 50-60-105, 50-60-203, 50-60-401, MCA

REASON: The proposed new rule is necessary because it replaces ARM 24.301.576, proposed for repeal. The new rule provides requirements for a notice of violations and clear deadlines for a manufacturer's response to a notice of violations. The new rule allows manufacturers to either correct violations identified in a notice or request a hearing. The prior rule did not distinguish how a manufacturer could exercise their right to a hearing without first correcting the violations identified in the notice.

NEW RULE XVIII (24.301.1273) VIOLATION AND HEARINGS (1) Any person aggrieved by a notice, order, or decision of the bureau under this subchapter, including a manufacturer who has received a notice of violation under [NEW RULE XVII (24.301.1271)], may request a hearing within 14 days of the bureau's service of the notice, order, or decision. The request must be in writing and shall briefly explain the basis for the request.

(2) All hearings shall be held in accordance with the provisions of the Montana Administrative Procedure Act, and the model rules adopted by the department in ARM 24.2.101. Proceedings under this rule are informal; however, the Montana Rules of Evidence and the Montana Rules of Civil Procedure may be used as guides for the hearing examiner.

(3) The appointed hearing examiner shall contact the parties in writing within 14 days of the bureau's receipt of the request for hearing to begin hearing procedures.

(4) Documents may be served electronically on any party who agrees in writing during the hearing process to electronic service.

(5) The department shall serve the final written decision on the affected parties within 30 days of the conclusion of the hearing.

AUTH: 50-60-105, 50-60-203, 50-60-401, MCA

IMP: 50-60-103, 50-60-105, 50-60-203, 50-60-401, MCA

REASON: The proposed new rule is necessary because it replaces ARM 24.301.577, proposed for repeal. The new rule clarifies when and how a party can request a hearing before the bureau. The new rule also provides deadlines for a party to request a hearing, a hearing examiner to contact the parties, and a deadline for the department to issue the decision – all of which will help with the timely processing of a request for a hearing. Furthermore, the new rule acknowledges the option of electronic service and communication that is common in legal proceedings.

7. The rules proposed to be repealed are as follows:

24.301.514 ENFORCEMENT GENERALLY

AUTH: 50-60-203, 50-60-401, MCA
IMP: 50-60-203, 50-60-401, MCA

REASON: The proposed repeal is necessary because the rule is duplicative of 50-60-202, MCA.

24.301.516 THIRD PARTY INSPECTIONS TO BE MONITORED

AUTH: 50-60-203, 50-60-401, MCA
IMP: 50-60-203, 50-60-401, MCA

REASON: The proposed repeal is necessary because the rule is duplicative of Section 402, Subsection 402.1 of the ICC/IMB 1205, 2021 edition.

24.301.517 INSPECTION OF MANUFACTURER

AUTH: 50-60-203, 50-60-401, MCA
IMP: 50-60-203, 50-60-401, MCA

REASON: The proposed repeal is necessary because the rule is duplicative of Chapter 6, Section 601, Subsection 601.5 of the ICC/IMB 1205 Standard, 2021 edition.

24.301.518 INSPECTION OF DEALER

AUTH: 50-60-203, 50-60-401, MCA
IMP: 50-60-203, 50-60-401, MCA

REASON: The proposed repeal is necessary because it is replaced by NEW RULE III (24.301.1215). The new rule reflects the language used in the ICC/IMB 1205 Standard and the ICC/IMB 1200 Standard proposed for adoption in NEW RULE I, particularly "retailer" rather than "manufacturer."

24.301.519 PRODUCT STANDARDS

AUTH: 50-60-203, 50-60-401, MCA
IMP: 50-60-203, 50-60-401, MCA

REASON: The proposed repeal is necessary because listed and labeled components installed according to their listing and the ability of the department to allow alternatives is found in Chapter 1, Section 101, Subsection 101.4 of the ICC/MBI 1200 Standard and ICC/MBI 1205 Standard, 2021 editions.

24.301.520 ALTERNATIVES

AUTH: 50-60-203, 50-60-401, MCA
IMP: 50-60-203, 50-60-401, MCA

REASON: The proposed repeal is necessary because the allowance of alternatives is found in Chapter 1, Section 101, Subsection 101.4 of the ICC/MBI 1200 and ICC/MBI 1205, 2021 edition and requires approval of the authority having jurisdiction.

24.301.521 APPROVAL OF MANUFACTURER

AUTH: 50-60-203, 50-60-401, MCA
IMP: 50-60-203, 50-60-401, MCA

REASON: The proposed repeal is necessary because registration and approval of manufacturers is provided for in Chapter 6, Section 601 of the ICC/MBI 1205, 2021 edition.

24.301.522 STATE BUILDING CODE INTERPRETATION

AUTH: 50-60-203, 50-60-401, MCA
IMP: 50-60-203, 50-60-401, MCA

REASON: The proposed repeal is necessary because this rule is duplicative of 50-60-117, MCA, and ARM 24.301.577.

24.301.525 REQUIREMENTS FOR DATA PLATE

AUTH: 50-60-203, 50-60-401, MCA
IMP: 50-60-402, MCA

REASON: The proposed repeal is necessary because requirements for data plate are now found in section 701.4 of the ICC/MBI 1205, 2021 edition.

24.301.535 APPLICATION FOR MODEL PLAN REVIEW

AUTH: 50-60-203, 50-60-401, MCA
IMP: 50-60-203, 50-60-401, 50-60-402, MCA

REASON: The proposed repeal is necessary because this rule is replaced by NEW RULE V (24.301.1221). The new rule updates and simplifies language and adopts the standards found in Chapter 3, Section 303 of the ICC/MBI 1205, proposed for adoption in NEW RULE I.

24.301.536 APPLICATION FOR IN-PLANT QUALITY CONTROL MANUAL REVIEW

AUTH: 50-60-203, 50-60-401, MCA
IMP: 50-60-203, 50-60-401, 50-60-402, MCA

REASON: The proposed repeal is necessary because the information for submitting a quality control manual for review is condensed into ARM 24.301.543.

24.301.537 CALCULATIONS AND TEST PROCEDURES

AUTH: 50-60-203, 50-60-401, MCA
IMP: 50-60-203, 50-60-401, MCA

REASON: The proposed repeal is necessary because required calculations and test procedures are now addressed in Chapter 3 of the ICC/MBI 1205, 2021 edition.

24.301.540 NONCONFORMING APPLICATION AND PLANS

AUTH: 50-60-203, 50-60-401, MCA
IMP: 50-60-203, 50-60-401, MCA

REASON: The proposed repeal is necessary because the rule is replaced by NEW RULE VII (24.301.1225). The new rule contains a simplified and updated process for addressing incomplete applications.

24.301.543 IN-PLANT QUALITY CONTROL

AUTH: 50-60-203, 50-60-401, MCA
IMP: 50-60-203, 50-60-401, MCA

REASON: The proposed repeal is necessary because the rule is replaced by NEW RULE VI (24.301.1223). The new rule updates and simplifies language.

24.301.544 TRANSMISSION OF REVIEW MATERIALS TO RECIPROCAL STATE

AUTH: 50-60-203, 50-60-401, 50-60-402, MCA
IMP: 50-60-203, 50-60-401, 50-60-402, MCA

REASON: The proposed repeal is necessary because the rule is replaced by NEW RULE X (24.301.1237).

24.301.545 CHANGES TO REVIEWED PLANS

AUTH: 50-60-203, 50-60-401, MCA
IMP: 50-60-203, 50-60-401, 50-60-402, MCA

REASON: The proposed repeal is necessary because (1) and (2) are replaced by NEW RULE VIII (24.301.1227). Section (3) is transferred to NEW RULE VI (24.301.1223).

24.301.546 CHANGE OF OWNERSHIP

AUTH: 50-60-203, 50-60-401, MCA
IMP: 50-60-203, 50-60-401, MCA

REASON: The proposed repeal is necessary because this information is addressed in Chapter 6, Section 601, Subsection 601.2 of the ICC/MBI 1205, 2021 edition.

24.301.547 CHANGE OF NAME OR ADDRESS

AUTH: 50-60-203, 50-60-401, MCA
IMP: 50-60-203, 50-60-401, MCA

REASON: The proposed repeal is necessary because this information is addressed in Chapter 6, Section 601, Subsection 601.2 of the ICC/MBI 1205, 2021 edition.

24.301.549 UNIT IDENTIFICATION

AUTH: 50-60-203, 50-60-401, MCA
IMP: 50-60-203, 50-60-401, MCA

REASON: The proposed repeal is necessary because this information is addressed in Chapter 7, Section 7017 of the ICC/MBI 1205, 2021 edition.

24.301.550 PLAN RENEWAL

AUTH: 50-60-203, 50-60-401, MCA
IMP: 50-60-203, 50-60-401, 50-60-402, MCA

REASON: The proposed repeal is necessary because the rule is replaced by NEW RULE IX (24.301.1231). The new rule clarifies and simplifies the rule.

24.301.557 INSIGNIA--WHEN REQUIRED

AUTH: 50-60-203, 50-60-401, MCA
IMP: 50-60-203, 50-60-401, 50-60-402, MCA

REASON: The proposed repeal is necessary because the rule is replaced by NEW RULE XI (24.301.1241). The new rule simplifies and clarifies language of the rule.

24.301.558 APPLICATION FOR INSIGNIA PURSUANT TO PLAN REVIEW

AUTH: 50-60-203, 50-60-401, MCA
IMP: 50-60-201, 50-60-203, 50-60-401, 50-60-402, MCA

REASON: The proposed repeal is necessary because the rule is replaced by NEW RULE XII (24.301.1243). The new rule simplifies and clarifies language.

24.301.559 DENIAL OF INSIGNIA

AUTH: 50-60-203, 50-60-401, MCA
IMP: 50-60-203, 50-60-401, MCA

REASON: The proposed repeal is necessary because the denial of insignia and the right to a hearing is addressed in ARM 24.301.577.

24.301.560 INSIGNIA REMOVAL

AUTH: 50-60-203, 50-60-401, MCA
IMP: 50-60-203, 50-60-401, MCA

REASON: The proposed repeal is necessary because (1) duplicates ARM 24.301.576 and 24.301.577. The department proposes transferring (2) to ARM 24.301.559.

24.301.561 LOST OR DAMAGED INSIGNIA

AUTH: 50-60-203, 50-60-401, MCA
IMP: 50-60-203, 50-60-401, MCA

REASON: The proposed repeal is necessary because the rule is replaced by NEW RULE XIV (24.301.1247).

24.301.562 ALTERATION VOIDS REVIEW--RETURN OR CONFISCATION OF INSIGNIA

AUTH: 50-60-203, 50-60-401, MCA
IMP: 50-60-203, 50-60-401, MCA

REASON: The proposed repeal is necessary because the necessary information in this rule has been transferred to NEW RULE XV (24.301.1249).

24.301.563 ALTERATION OR CONVERSION OF UNIT BEARING INSIGNIA

AUTH: 50-60-203, 50-60-401, MCA
IMP: 50-60-203, 50-60-401, MCA

REASON: The proposed repeal is necessary because the rule is replaced by NEW RULE XV (24.301.1249). The new rule updates and clarifies language.

24.301.564 EFFECT OF INSIGNIA

AUTH: 50-60-203, 50-60-401, MCA
IMP: 50-60-203, 50-60-401, 50-60-402, MCA

REASON: The proposed repeal is necessary because the rule is replaced by NEW RULE XIII (24.301.1245). The new rule updates and clarifies language.

24.301.566 INSIGNIA FEES

AUTH: 50-60-104, 50-60-203, 50-60-401, MCA
IMP: 50-60-104, 50-60-203, 50-60-401, MCA

REASON: The proposed repeal is necessary because the rule is replaced by NEW RULE XVI (24.301.1263). The new rule updates and clarifies language.

24.301.576 NOTICE OF VIOLATIONS

AUTH: 50-60-203, 50-60-401, MCA
IMP: 50-60-203, 50-60-401, MCA

REASON: The proposed repeal is necessary because the rule is replaced by NEW RULE XVII (24.301.1271). The new rule updates and clarifies language.

24.301.577 VIOLATION AND HEARINGS

AUTH: 50-60-203, 50-60-401, MCA
IMP: 50-60-203, 50-60-401, MCA

REASON: The proposed repeal is necessary because the rule is replaced by NEW RULE XVIII (24.301.1273). The new rule updates and clarifies language.

8. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728, Helena, Montana 59624. Comments must be received no later than 5:00 p.m., August 23, 2024.

9. An electronic copy of this notice of public hearing is available at dli.mt.gov/rules and rules.mt.gov.

10. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728, Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

11. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor for HB 465 was contacted on May 22, 2023, by electronic mail. The primary bill sponsor for SB 406 was contacted on December 19, 2023, by electronic mail. The primary bill sponsor for HB 241 was contacted on January 16, 2024, by electronic mail.

12. Pursuant to 2-4-111, MCA, the agency has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

13. Department staff has been designated to preside over and conduct this hearing.

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Rule Reviewer

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 16, 2024.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULE I, the amendment of ARM 32.3.104, 32.3.108, 32.3.131, 32.3.140, 32.3.201, 32.3.207, 32.3.216, 32.3.301, 32.3.403, 32.3.411, 32.3.416, 32.3.606, 32.3.1505, and 32.3.2301, and the repeal of ARM 32.3.132, 32.3.302, 32.3.303, 32.3.304, 32.3.305, 32.3.307, 32.3.308, 32.3.309, 32.3.310, 32.3.311, 32.3.312, 32.3.313, 32.3.314, 32.3.315, 32.3.402, 32.3.407, 32.3.412, 32.3.418, 32.3.440, 32.3.608, 32.3.1305, 32.3.1507, 32.3.2006, and 32.3.2303 pertaining to animal contagious disease control	)	AMENDED NOTICE OF PROPOSED ADOPTION, AMENDMENT, AND REPEAL NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On July 5, 2024, the Department of Livestock published MAR Notice No. 32-24-345 regarding the proposed adoption, amendment, and repeal of the above-stated rules at page 1530 of the 2024 Montana Administrative Register, Issue No. 13. The department is re-publishing this rulemaking notice to adhere to the requirements of 2-4-302(2)(a), MCA.

2. The Department of Livestock (department) proposes to adopt, amend, and repeal the above-stated rules.

3. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on August 16, 2024, to advise us of the nature of the accommodation that you need. Please contact Executive Officer, Department of Livestock, 301 N. Roberts St., Room 308, Helena, Montana, 59620-2001; telephone (406) 444-9525; fax (406) 444-4316; TDD/Montana Relay Service 1 (800) 253-4091; or e-mail MDOLcomments@mt.gov.

4. The rule proposed to be adopted provides as follows:

<u>NEW RULE I INDEMNITY FOR ANIMALS DESTROYED DUE TO DISEASE</u>

(1) The owner of cattle, domestic bison, sheep, goats, swine, alternative livestock, and poultry destroyed or slaughtered due to disease as specified in 81-2-201, MCA, under the direction of the department or by order of the board may be

paid indemnity for up to 100% of the appraised value of the animal, provided, however, payment for registered animals shall not exceed two times the determined value of commercial or grade animals.

(2) The indemnity shall be paid when the following conditions exist:

(a) at the time of test or condemnation, the animal for which indemnity is claimed did not belong to or was not upon the premises of any person to whom it had been sold for slaughter, shipped for slaughter, or delivered for slaughter;

(b) the animal was purchased or imported into Montana less than 120 days before the date of a test disclosing reactor animals, and the owner is a farmer or rancher buying and selling animals in the ordinary course of their farm and ranch operation. Cattle must have been branded with the owner's brand prior to the date of the test;

(c) if not already tested, the herd of origin of the reactor animal for which indemnity is claimed is made available by the claimant for an official test;

(d) the provisions of this subchapter pertaining to testing, quarantine, movement of animals under quarantine, cleaning and disinfection have been carried out; and

(e) an application claiming indemnity has been submitted.

(3) The amount of indemnity paid by the department shall be decided by the board with consideration given to any indemnity payments already paid on the animals, comparable sales receipts provided by the owner, the U.S. Department of Agriculture (USDA) indemnity calculator, USDA Agriculture Marketing Service market reports, and sales data from Montana livestock markets at the time the animal was taken.

(4) If there is a mortgage or lien recorded with the department on cattle slaughtered and indemnified in accordance with the provisions of this subchapter, the warrant paying the indemnity shall be made payable jointly to the owner of the cattle and the lien holder or mortgagee.

AUTH: 81-2-102, 81-2-103, 81-2-104, MCA
IMP: 81-2-201, 81-2-209, 81-2-210, MCA

REASON: This proposed rule implements 2023 amendments to Title 81, chapter 2, part 2, MCA, regarding compensation for animals ordered destroyed due to disease. The proposed rule sets forth the procedure and conditions under which compensation may be paid and replaces disease-specific indemnification rules such as ARM 32.3.418.

5. The rules proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

32.3.104 SUBJECT DISEASES OR CONDITIONS (1) Diseases or conditions affecting multiple species that require reporting, and quarantine when indicated, under department rules are:

(a) and (b) remain the same.

(c) Bluetongue (quarantine);

(d) through (3) remain the same.

(4) Diseases or conditions affecting equines that require reporting, and quarantine when indicated, under department rules are:

(a) through (l) remain the same.

(m) Strangles (quarantine);

(n) through (9) remain the same.

(10) Diseases and conditions affecting canids that require reporting, and quarantine when indicated, under department rules are:

(a) Brucella canis (quarantine).

(11) and (12) remain the same.

AUTH: 81-2-102, 81-2-103, 81-20-101, MCA
IMP: 81-2-102, 81-20-101, MCA

REASON: The proposed additions to ARM 32.3.104's list of diseases and conditions that require quarantine are necessary to allow the department to track and manage diseases of special interest to Montana's livestock industries. Quarantine authority for bluetongue is necessary in the event that detection in animals is made shortly before they are to enter market channels to avoid spread. Quarantine authority for strangles is necessary due to the existence of equine boarding facilities. Quarantine authority for *Brucella canin* is necessary due to the prevalence of canine breeding facilities.

32.3.108 QUARANTINE AND RELEASE OF QUARANTINE (1) Animals subject to quarantine shall ~~be~~, as soon as it is practicable, be quarantined separate and apart from other susceptible animals. If possible, they shall be quarantined in an inside enclosure.

~~(2) Quarantined animals shall be identified by brand, tattoo, dye mark, eartag, or other identification acceptable to the Montana Department of Livestock.~~

~~(3)~~ (2) The person who issues the quarantine shall designate the number of animals quarantined, their approximate age, breed class, species, sex, a description of the mark or brand identifying the animals, and a clear and distinct identification of the area in which they are to be quarantined. Quarantines may be issued verbally or delivered in writing in person, by email, or through registered mail with return receipt. Quarantines issued for herds associated with a positive disease detection must be delivered in writing in person or through registered mail with return receipt.

~~(4) The person issuing the quarantine shall deliver or forward through the United States mail, by registered mail return receipt requested with instructions to deliver to the addressee only, the notice of quarantine to the owner or agent of the animals quarantined.~~

~~(5)~~ (3) The person issuing the quarantine shall ~~also~~ immediately ~~deliver~~ provide notice ~~personally or by mail~~ to the state veterinarian.

(4) Quarantined livestock shall be identified with a serially numbered U.S. Department of Agriculture (USDA) tag or other form of approved official identification. Additional identification, including brand, tattoo, dye mark, eartag, or other identification acceptable to the Department of Livestock may be required by the state veterinarian to ensure that the identity of the animals will be preserved.

(5) Livestock herds designated as affected with a federal program disease shall be officially identified with USDA 840 series radio frequency identification (RFID) tags or microchips. The 840 official identification number shall be correlated to all existing forms of identification in order to reconcile the completion of all required testing.

(6) The unauthorized removal of any identification provided for under this rule is prohibited.

(7) The owner or their agent-in-charge shall report in writing to the state veterinarian the death of any quarantined animal. All man-made identification shall be salvaged and turned over to the state veterinarian.

(8) A signed affected herd management plan will be required as a condition for quarantine release for all herds and flocks confirmed to be infected with a federal program disease.

(9) Cleaning and disinfection of facilities and or vehicles will be required as a condition for quarantine release when specified in 9 CFR or disease specific uniform methods and rules.

~~(6)~~ (10) Where quarantined animals are shipped for immediate slaughter under permit from the ~~Montana~~ Department of Livestock, the veterinarian issuing the permit will use ~~the approved federal and state form~~ a form approved by the state veterinarian.

~~(7)~~ (11) Quarantine may be removed by or with the approval of the deputy state veterinarian issuing the quarantine or by any authorized quarantine agent of the Department of Livestock when ~~he is~~ they are satisfied that, according to generally accepted veterinary practice, the animals are not affected with or have not been directly exposed to a quarantinable disease.

AUTH: 81-2-102, 81-2-103, 81-20-101, MCA
IMP: 81-2-102, 81-2-103, 81-20-101, MCA

REASON: The proposed amendments creating new (2) and (3) modernize the permissible communication methods and make them consistent with those currently utilized by individuals with quarantine authority under ARM 32.3.106 to both issue a quarantine and report an issued quarantine to the state veterinarian. New (4), (5), (6), and (10) make requirements consistent with current department practices. New (7) replaces ARM 32.3.608 and makes its reporting requirement applicable to all disease quarantines. New (8) replaces ARM 32.3.312 and 32.3.412 and, together with new (9), promotes consistency with the requirements of U.S. Department of Agriculture disease programs. New (11) updates the rule by implementing gender neutral language.

32.3.131 VEHICLES USED IN TRANSPORTING DISEASED LIVESTOCK TO BE CLEANED AND DISINFECTED (1) Any ~~railway,~~ transportation company~~,~~ or individual must properly clean and disinfect~~,~~ any car, truck, or conveyance which has held an animal known to be infected with an infectious, contagious disease. The required cleaning will be based upon the specific pathogen of concern and existing federal rules or regulations regarding disinfection and will be conducted under the supervision of an approved agent of the Department of Livestock or an official from

the U.S. Department of Agriculture ~~authorized state livestock sanitary official or an official approved by the U.S. Department of Agriculture, any car, truck, or conveyance which has held an animal or poultry infected with an infectious, contagious disease before using such car, truck, or conveyance for the transportation or conveyance of animals into or within the state of Montana~~.

AUTH: 81-2-102, 81-20-101, MCA
IMP: 81-2-102, 81-20-101, MCA

REASON: The proposed amendment incorporates federal standards and protocols for specific diseases and clarifies that vehicle cleaning is required when the animal is known or suspected to be infected at the time of transportation.

32.3.140 DUTIES OF DEPUTY STATE VETERINARIAN (1) A deputy state veterinarian shall:

(a) and (b) remain the same.

(c) quarantine in writing all animals exposed to a quarantinable disease upon suspicion of diagnosis in the absence of, or on the order of, the state veterinarian. Immediate notification of quarantine must be made to the ~~Montana~~ state veterinarian's office by phone~~, fax, or mail~~;

(d) report immediately all cases of quarantinable diseases (ARM 32.3.104 and 32.3.105) to the state veterinarian ~~in Helena~~, by ~~tele~~phone ~~or fax~~;

(e) through (g) remain the same.

(h) ~~file a monthly form regarding~~ report other reportable diseases (ARM 32.3.104) to the state veterinarian within 30 days of confirmed or suspected diagnosis; and

(i) mail or email weekly, all required inspection forms, test charts, certificates of veterinary inspection, and vaccination certificates made during the week.

AUTH: 81-2-102, 81-2-103, MCA
IMP: 81-2-102, 81-2-103, ~~81-2-108,~~ MCA

REASON: The proposed amendment modernizes the permissible communication methods currently utilized and makes this rule consistent with the proposed new ARM 32.3.108(3).

32.3.201 DEFINITIONS (1) In this subchapter:

(a) through (d) remain the same.

(e) "Health certificate" a certificate of veterinary inspection issued on an official health certificate form of the state of origin, an electronic certificate of veterinary inspection approved by the state of origin, or an equivalent U.S. Department of Agriculture form ~~of the U.S. Department of Agriculture~~ attesting that the animals described thereon have been visually inspected and found to meet the entry requirements of the state of Montana. In addition, the health certificate shall conform to the requirements of ARM 32.3.206.

(f) through (p) remain the same.

AUTH: 81-2-102, 81-2-103, 81-2-104, 81-2-707, 81-20-101, MCA
IMP: 81-2-102, 81-2-103, 81-2-104, 81-2-703, 81-20-101, MCA

REASON: The majority of health certificates that are currently issued are electronic certificates of veterinary inspection, and this proposed amendment modernizes the rule language to specifically allow for electronic certificates consistent with current industry practice.

32.3.207 PERMITS (1) Permits are issued by the ~~Montana~~ Department of Livestock. Persons applying for permits shall provide the following information: names and addresses of the consignor and consignee, number and kind of animals, origin of shipment, ~~final~~ destination, purpose of shipment, ~~method of transportation,~~ and such other information as the state veterinarian may require.

(2) Permits are valid for ~~no longer than ten days from the date of issuance~~ 30 days from the date of veterinary inspection specified on the health certificate unless otherwise specified as follows:

(a) and (b) remain the same.

~~(c) entry extended, 30 days;~~

~~(d) equine annual, yearly;~~

~~(e) NPIP poultry, yearly;~~

~~(f) re-entry, up to 30 days;~~

(g) remains the same, but is renumbered (c).

~~(h) six-month horse passport, six months.~~

(i) and (j) remain the same, but are renumbered (d) and (e).

(3) Permits will be issued provided the animals shown thereon are in compliance with these rules. However, ~~in order~~ to cope with changing disease conditions, the state veterinarian may refuse to issue a permit or make such conditions not specifically set forth in these rules for its issuance as is necessary to protect livestock health in Montana.

(4) Permits will be provided to persons requesting them immediately upon issue. To facilitate the movement of animals or items required to enter Montana by permit, if the prerequisites have been met, a permit number may be issued ~~by telephone~~ electronically or verbally. The permit number ~~so issued~~ must be affixed to the health certificate if required, waybill, brand inspection certificate, and any other official documents in this fashion: "Montana Permit No." followed by the number.

~~(5) When these rules require entry by permit, at the time the permit is issued, the department may require that an official health certificate or other approved documentation be obtained either at the point of origin, the point of destination, or some other location within Montana designated by the department.~~

AUTH: 81-2-102, 81-2-103, 81-2-104, 81-2-707, 81-20-101, MCA
IMP: 81-2-102, 81-2-103, 81-2-104, 81-2-703, 81-20-101, MCA

REASON: The types of permits proposed to be deleted from (2) are no longer used by the department. Import permits currently are valid for a shorter period of time than heath certificates, and the department seeks to ensure that import permits are valid for as long as health certificates are valid. Section (5) is proposed to be

deleted because (4) includes the requirement that a health certificate accompany a permt. The remainder of the proposed amendments make the requirements consistent with current department practice.

32.3.216 HORSES, MULES, AND ASSES (1) Horses, mules, and asses, and other equidae may enter the state of Montana provided they are transported or moved in conformity with ARM 32.3.201 through 32.3.211. All animals must be tested negative for Equine Infectious Anemia (EIA) within the previous 12 months ~~as a condition for obtaining the permit required by ARM 32.3.207~~.

(2) Unless otherwise specifically provided in this rule, all horses, mules, asses, and other equidae that are moved into the state of Montana shall be accompanied by an official certificate of veterinary inspection ~~or equine passport certificate~~ from the state of origin stating that the equidae are free from evidence of any communicable disease and have completed EIA test and identification requirements as defined in ARM 32.3.1401 using procedures outlined in ARM 32.3.1402.

(3) Entry of equidae into Montana shall not be allowed until the EIA test has been completed and reported negative. Equidae with tests pending are not acceptable. Equidae that test positive to EIA test shall not be permitted entry into Montana except by special written permission from the state veterinarian and must be branded and moved in conformity with the ~~USDA~~ U.S. Department of Agriculture EIA movement regulations.

(4) through (7) remain the same.

(8) Provided there is ~~a written~~ agreement between the Department of Livestock and the chief livestock sanitary official of the state of destination, Montana origin equids may be moved from Montana to other states or from other states to Montana for shows, rides, or other equine events and return on an extended duration health certificate ~~equine passport certification under a state system of equine certification~~ acceptable to the cooperating states.

(a) ~~Equine passport~~ Certificates cannot be used when equids are moved for the purposes of sale or change of ownership ~~of the equid~~, or for animal breeding activities~~, or movements that involve stays of longer than 90 days. Equids moved for these purposes must be accompanied by a certificate of veterinary inspection~~.

~~(b) Equine passport movement must involve short term travel to or from the state of Montana for participation in equine activities including but not limited to participation in equine events, shows, rodeos, roping, trail rides, and search and rescue activities.~~

~~(c)~~ (b) ~~Equine passport~~ Certificates shall be valid for only one animal and shall contain the following information:

(i) remains the same.

(ii) the ~~location at which~~ address where the animal is stabled, housed, pastured, or kept, if different from that of the owner;

(iii) through (vi) remain the same.

~~(d) No certificate or veterinary inspection or equine passport certificate shall be issued for equine to enter Montana unless it is complete in all respects with requirements of the state of Montana.~~

~~(e) Equine passport certificates must be properly completed with the required tests and certifications recorded on the certificate and a copy of the completed certificate must be submitted to and approved by the Department of Livestock~~.

~~(f)~~ (c) ~~Equine passport~~ Certificates shall be valid for no longer than six months from the date the EIA sample is collected if an EIA test is required, or six months from the date of inspection if no EIA test is required.

~~(g)~~ (d) The recipients of ~~equine passport~~ certificates shall be required to ~~submit a travel itinerary to the state veterinarian's office within ten working days following the date of expiration of the certificate~~ obtain a transport permit prior to each animal movement. The ~~travel itinerary~~ transport permit shall include ~~a listing of all travel that the equid made into and out of the state of Montana during the validity of the certificate~~ the full physical origin and destination of the upcoming animal movement.

~~(h)~~ (e) The Department of Livestock may cancel any ~~equine passport~~ extended duration health certificate in the event of serious or emergency disease situations or for certificate holder's failure to comply with the rules ~~that apply to such certificates~~. Cancellation of the certificate may be accomplished by written or verbal notice to the certificate holder. Verbal notice shall be confirmed by written notice. The canceled certificate will become invalid on the date and at the time of notification.

AUTH: 81-2-102, 81-2-103, 81-2-707, MCA
IMP: 81-2-102, 81-2-103, 81-2-703, MCA

REASON: The current rule expresses the department's participation in an equine passport program that has since been permitted to sunset due to the fact that more states are instead participating in an equine extended duration health certificate program. The proposed amendments will confirm the state of Montana's participation in the extended duration health certificate program.

32.3.301 ~~DEFINITIONS~~ DISEASE CONTROL (1) ~~"Pseudorabies" is an acute, sometimes fatal disease, caused by a specific herpes virus and characterized by a variety of clinical signs, involving mainly the nervous and respiratory systems. Most species of domestic and wild animals are susceptible to infection by this viral agent, but only swine are known to become chronic carriers. Man and higher primates are resistant~~ The department adopts and incorporates by reference the federal pseudorabies disease control standards contained in Title 9 of the Code of Federal Regulations and the U.S. Department of Agriculture's *Pseudorabies Eradication State-Federal-Industry Program Standards*. The Code of Federal Regulations is available for review online at www.ecfr.gov. The *Pseudorabies Eradication State-Federal-Industry Program Standards* is available for review online at https://www.aphis.usda.gov/sites/default/files/prv_program_standards_3.pdf. A copy of both documents may be obtained from the Department of Livestock, 301 North Roberts Street, P.O. Box 202001, Helena, Montana 59620-2001.

~~(2) "Department" is the Montana department of livestock, animal health division.~~

~~(3)~~ (2) An "animal" in this subchapter means ~~is~~ any quadruped of a species which can become infected with pseudorabies.

~~(4) An "official test" is any department-approved pseudorabies test conducted by a person authorized by the department and the USDA, as specifically qualified to conduct such test on animals or animal tissues. Official tests are designed to indicate the presence of pseudorabies infection, utilizing one or more of the following procedures: latex agglutination (LA) , serum neutralization (SN) , florescent antibody (FA) , enzyme labeled immunosorbant assay (ELISA) , or any other virus isolation test or serological procedure recognized for use in the diagnosis of pseudorabies. To be considered official, the test must be conducted in an approved facility. Interpretation of test results are to be made by an individual qualified to make such scientific judgments and who is in the employ of the department or the USDA. Interpretation and test results are to be reported on official forms of the department.~~

~~(5) An "approved reagent" is a standardized biologic product approved by USDA for use in pseudorabies testing. Use of approved reagents, which includes antigens and test serums, are restricted to official tests only.~~

~~(6) "Official vaccination" is the administration of an approved pseudorabies immunization biologic licensed by USDA. The administration will be by a deputy state veterinarian or other person approved by the state veterinarian. The vaccination will be administered only with the express permission of the state veterinarian, and all such vaccinations will be reported on forms provided by the department. Only official vaccination is permitted in Montana.~~

~~(7) An "official vaccinate" is an animal receiving an official vaccination and which is given proper permanent identification.~~

~~(8) "Proper permanent identification" means use of the official nine-character alpha-numeric eartag as provided by the department, or individual identification as otherwise prescribed by the department. Proper permanent identification is required with blood samples used for official tests.~~

~~(9) An "infected or positive animal" is any animal that discloses sufficient reaction to an official test which indicates the presence of field strain pseudorabies virus or which is found to be infected with field strain pseudorabies virus by other recognized diagnostic procedures.~~

~~(10) A "suspect animal" is an animal disclosing an equivocal result to an official test or diagnostic procedure in which there is sufficient reaction, indicating the possible presence of pseudorabies infection but is in itself insufficient to justify classification of the animal as infected. This classification ordinarily requires the use of additional laboratory testing procedures to allow classification as infected or noninfected.~~

~~(11) A "noninfected or negative animal" is an animal free of clinical signs of pseudorabies and giving a negative result to an official test designed to detect pseudorabies infection with field strain virus.~~

~~(12) An "exposed animal" is any animal that is part of a herd or the herd premises infected with pseudorabies, or an animal that has had sufficient contact anywhere with pseudorabies infection or test reactors for the transmission of pseudorabies virus to have occurred. Animals other than swine that have not had~~

~~significant contact with infected pseudorabies animals within the previous 10 days are not considered exposed.~~

~~(13) A "herd" is one or more animals of the same species owned or supervised by one or more persons and that permits intermingling of animals unhindered or in which interchange of animals without regard to health status is allowed.~~

~~(14) A "contact herd" is a herd of animals of the same species that, through epidemiological investigation, is shown to come proximal to infected or test positive animals sufficiently for the transmission of pseudorabies virus to occur. Also, a herd containing exposed animals.~~

~~(15) A "herd test" is a test of all animals six months of age and older contained as a herd. Blood samples taken at the herd test will be identified to the donor animal using proper permanent identification applied to that animal.~~

~~(16) A "random herd test" is a herd test at recognized random rates that yield significant confidence that any infection would have been detected. Recognized random rates are shown in the UM&R for pseudorabies eradication.~~

~~(17) "Offspring segregation plan" means a procedure whereby offspring of pseudorabies-infected sows are segregated from those infected sows at an age where they are passively immune to pseudorabies and by applying test and separation principles can be developed into pseudorabies-free breeding swine that serve as the foundation for a pseudorabies-free breeding herd (Reference: UM&R for pseudorabies eradication herd plan manual) .~~

~~(18) "Emergency circumstances" means events or situations which, in the opinion of the board of livestock, pose an immediate or impending economic or livestock health danger to the livestock industry.~~

AUTH: 81-2-102, 81-2-103, 81-2-104, MCA
IMP: 81-2-102, 81-2-103, 81-2-104, MCA

REASON: The U.S. Department of Agriculture administers a Cooperative State-Federal Pseudorabies Eradication Program to control the interstate spread and dissemination of pseudorabies and has promulgated disease control regulations accordingly in 9 CFR Part 85. The proposed amendment promotes simplicity by adopting and incorporating the federal standards and, along with the proposed repeal of ARM 32.3.302, 32.3.303, 32.3.304, 32.3.305, 32.3.307, 32.3.308, 32.3.309, 32.3.310, 32.3.311, 32.3.312, 32.3.313, 32.3.314, and 32.3.315, will advance the Governor's Red Tape Relief Initiative.

32.3.403 USE OF BRUCELLA ABORTUS VACCINE (1) remains the same.

~~(2) The state veterinarian, upon discovery that the owner of imported livestock eligible for official vaccination cannot or will not otherwise have those cattle or domestic bison officially vaccinated, shall arrange for the official vaccination of such eligible cattle or domestic bison at a reasonable cost to the owner.~~

AUTH: 81-2-102, 81-2-103, 81-2-104, MCA
IMP: 81-2-102, 81-2-103, 81-2-104, MCA

REASON: The U.S. Department of Agriculture administers a Cooperative State-Federal Brucellosis Eradication Program to control the interstate spread and dissemination of brucellosis in livestock and has promulgated disease control regulations accordingly in 9 CFR Part 78. The federal program no longer imposes a brucellosis vaccine import requirement.

32.3.411 PROCEDURE UPON DETECTION OF BRUCELLOSIS

(1) ~~Immediately upon quarantine of a herd for brucellosis the state veterinarian shall conduct an epidemiological investigation of the infected herd and premises involved to determine the specific methods and actions necessary to eradicate the disease from the herd and to determine contact herds and animals~~ The department adopts and incorporates by reference the federal brucellosis disease control standards contained in Title 9 of the Code of Federal Regulations and the U.S. Department of Agriculture's *Brucellosis Eradication: Uniform Methods and Rules*. The Code of Federal Regulations is available for review online at www.ecfr.gov. The *Brucellosis Eradication: Uniform Methods and Rules* is available for review online at https://www.aphis.usda.gov/sites/default/files/umr_bovine_bruc_0.pdf. A copy of both documents may be obtained from the Department of Livestock, 301 North Roberts Street, P.O. Box 202001, Helena, Montana 59620-2001.

(2) Upon request of the owner of ~~the~~ an infected herd, the ~~investigation~~ disease control activities provided for in (1) may be conducted with the assistance and participation of a deputy state veterinarian selected and paid for by the owner.

~~(3) An official epidemiological report must be prepared that specifies the methods necessary to eradicate the disease and includes a time table for the accomplishment of the various tasks.~~

~~(4) A person who is aggrieved by determination made pursuant to this section may appeal in writing to the state veterinarian within five days after notice of such determination. The state veterinarian may affirm, reverse or modify such determination after he has reviewed the epidemiological report and the issues involved.~~

AUTH: 81-2-102, 81-2-103, 81-2-104, MCA
IMP: 81-2-102, 81-2-103, 81-2-104, MCA

REASON: The U.S. Department of Agriculture administers a Cooperative State-Federal Brucellosis Eradication Program to control the interstate spread and dissemination of brucellosis in livestock and has promulgated disease control regulations accordingly in 9 CFR Part 78. The proposed amendment promotes simplicity by adopting and incorporating the federal standards and, along with the proposed repeal of ARM 32.3.402, 32.3.407, 32.3.412, will advance the goals of the Governor's Red Tape Relief Initiative.

32.3.416 IDENTIFICATION OF TESTED, REACTOR, AND OTHER ANIMALS (1) Reactor animals must be tagged ~~in the left ear~~ with a serially numbered ~~United States~~ U.S. Department of Agriculture (USDA) ~~or department brucellosis reactor~~ tag. If in the judgment of the state veterinarian, there is concern

about compliance with the provisions of quarantine or if the reactor animal is found outside of the Designated Surveillance Area, the animal may~~, and must~~ be permanently branded on the left jaw with the letter "B" not less than two inches high. Tagging and branding of reactors must be accomplished within 15 days after the date of test on blood collected from the animal. The time allowed to tag and brand reactor animals, as specified herein, may be enlarged or extended by the state veterinarian for good cause shown.

(2) Animals which have been subjected to an official test for brucellosis must be identified with serially numbered USDA identification ear tags ~~of the United States Department of Agriculture or of the department, registration tattoos, numbered earmarks, or other definite individual animal identification mark, approved by the department, and applied under the supervision of the department~~.

(3) The ~~United States Department of Agriculture~~ USDA backtag is adopted by the Department of Livestock as an official animal identification tag for market cattle identification (MCI).

(4) remains the same.

AUTH: 81-2-102, 81-2-103, 81-2-104, MCA
IMP: 81-2-102, 81-2-103, 81-2-104, MCA

REASON: The U.S. Department of Agriculture administers a Cooperative State-Federal Brucellosis Eradication Program to control the interstate spread and dissemination of brucellosis in livestock and has promulgated disease control regulations accordingly in 9 CFR Part 78, which the department proposes to explicitly adopt and incorporate in this notice. This proposed amendment gives the state veterinarian discretion over whether to permanently brand a reactor animal in addition to the federal program's identification requirements.

32.3.606 IDENTIFYING INFECTED ANIMALS (1) Tuberculosis reactors must be identified with a serially numbered U.S. Department of Agriculture tag. If, in the judgment of the state veterinarian, there is concern about compliance with the provisions of quarantine, the animal may be ~~All animals infected with tuberculosis, as determined by physical examination or tuberculin test, or otherwise, must be immediately segregated, eartagged with an official tuberculosis reactor eartag, and~~ branded with the letter "T" on either the right or left jaw.

(2) remains the same.

AUTH: 81-2-102, 81-2-103, MCA
IMP: 81-2-102, 81-2-103, MCA

REASON: Montana is a U.S. Department of Agriculture (USDA) accredited tuberculosis-free state. (9 CFR § 77.7(a)). To qualify as a USDA accredited tuberculosis-free state, Montana must have the authority to enforce and to comply with the provisions of USDA's "Uniform Methods and Rules–Bovine Tuberculosis Eradication" and must enforce regulations that impose restrictions that are substantially the same as those in place under 9 CFR Part 77. (9 CFR § 77.1, 3, .5). The proposed amendment is consistent with the federal program's requirements and

gives the state veterinarian discretion over whether to permanently brand a reactor animal in addition to the federal program's requirements.

32.3.1505 BLOOD TESTING WITH SALMONELLA ANTIGENS (1) The official pullorum-typhoid blood test is the standard tube agglutination test, the rapid serum test, or the stained-antigen, rapid, whole-blood test. The antigen used for official whole-blood tests shall be supplied by the ~~Montana~~ Department of Livestock, Animal Health Division (department).

(2) remains the same.

(3) All chickens to be used as breeders must be tested when more than ~~five~~ four months of age.

(4) and (5) remain the same.

(6) Reactors may be submitted to the ~~Montana~~ department ~~of Livestock, Animal Health Division~~ laboratory for autopsy and bacteriological examination. The number of reactors to be submitted must be designated by a representative of the ~~Montana~~ department ~~of Livestock, Animal Health Division~~. In case such bacteriological examination fails to demonstrate pullorum or typhoid infections, the flock may be classified as free from pullorum or typhoid. If other members of the Salmonella group are isolated, the ~~Montana~~ department ~~of Livestock, Animal Health Division~~ may disqualify the flock for the production of hatching eggs, or require such action as is deemed necessary with respect to the infection.

(7) The ~~Montana~~ department ~~of Livestock, Animal Health Division~~ may designate or license authorized testing agents who have demonstrated the ability to perform the duties of pullorum-typhoid testing to the satisfaction of the department.

(a) through (c) remain the same.

AUTH: 81-20-101, MCA
IMP: 81-20-101, MCA

REASON: The U.S. Department of Agriculture administers a National Poultry Improvement Plan (NPIP) through which new or existing diagnostic technology can be effectively applied to improve poultry and poultry products by controlling or eliminating specific poultry diseases. The proposed amendment makes the department's rules consistent with the NPIP standards.

32.3.2301 CONTROL OF BIOLOGICS (1) remains the same.

(2) No biologic may be brought into the state without a permit from the Department of Livestock (department) as required by 81-2-703, MCA. A long term permit may be granted upon request.

(3) No person may manufacture for sale, or sell, or offer for sale for use in the state of Montana, any biological product intended for diagnostic, immunizing or therapeutic purposes in animals unless such product is approved by and manufactured under a license issued by the U.S. Department of Agriculture, or unless upon specific permission in writing by the ~~Montana~~ department's ~~of Livestock,~~ animal health division.

(4) and (5) remain the same.

(6) All serums, viruses, and vaccines sold or offered for sale in the state of Montana for use in domestic animals shall be stored according to the manufacturer's label conditions ~~kept in a dark place at a temperature of not more than 45°F, and not less than 35°F, until such time as they are sold, and shall not be sold after their expiration date~~. They must be sold in their original container.

AUTH: 81-2-102, 81-2-707, 81-20-101, MCA
IMP: 81-2-102, 81-2-707, 81-20-101, MCA

REASON: The amendment will defer to the manufacturer's recommended storage and handling requirements for each specific biologic rather than impose a blanket storage and handling requirement for all biologics. This will promote safety and efficacy as manufacturer's labels are vetted through their regulatory authorities and are particularized to the specific biologic in question.

6. The department proposes to repeal the following rules:

32.3.132 CLEANED AND DISINFECTED VEHICLES TO BE PLACARDED

AUTH: 81-2-102, 81-20-101, MCA
IMP: 81-2-102, 81-20-101, MCA

REASON: This rule does not reflect the department's current practice, and thus repeal will advance the goals of the Governor's Red Tape Relief Initiative. Placarding for diseases and conditions requiring quarantine may still be addressed in the management plan provided for in the proposed new ARM 32.3.108(8) set forth in this notice.

32.3.302 REPORTING OF PSEUDORABIES

AUTH: 81-2-102, 81-2-103, MCA
IMP: 81-2-102, MCA

32.3.303 QUARANTINE OF SWINE HERDS - USE OF QUARANTINE

AUTH: 81-2-102, 81-2-103, MCA
IMP: 81-2-102, MCA

32.3.304 QUARANTINE OF EXPOSED HERDS AND ANIMALS

AUTH: 81-2-102, 81-2-103, MCA
IMP: 81-2-102, MCA

32.3.305 RELEASE OF QUARANTINE

AUTH: 81-2-102, 81-2-103, MCA
IMP: 81-2-102, MCA

32.3.307 DEPARTMENT ORDERED PSEUDORABIES TESTING

AUTH: 81-2-102, 81-2-103, MCA
IMP: 81-2-102, MCA

32.3.308 CHANGE OF PREMISES TESTING

AUTH: 81-2-102, 81-2-103, MCA
IMP: 81-2-102, 81-2-103, MCA

32.3.309 TEST EXPENSES AND DUTIES

AUTH: 81-2-102, 81-2-103, MCA
IMP: 81-2-102, 81-2-103, MCA

32.3.310 DISPOSAL OF DEAD ANIMALS

AUTH: 81-2-102, 81-2-103, MCA
IMP: 81-2-101, 81-2-102, 81-2-108, MCA

32.3.311 PROCEDURE UPON DETECTION OF PSEUDORABIES

AUTH: 81-2-102, 81-2-103, MCA
IMP: 81-2-102, 81-2-103, MCA

32.3.312 MEMORANDUM OF UNDERSTANDING

AUTH: 81-1-102, MCA
IMP: 81-2-102, MCA

32.3.313 EXTENSION OF TIME LIMITS

AUTH: 81-2-102, 81-2-103, MCA
IMP: 81-2-102, MCA

32.3.314 MOVEMENT OF SWINE THROUGH LICENSED LIVESTOCK MARKETS AND OTHER CONCENTRATION POINTS

AUTH: 81-2-102, 81-2-103, MCA
IMP: 81-2-102, MCA

32.3.315 HERD STATUS ESTABLISHMENT

AUTH: 81-2-102, MCA
IMP: 81-2-102, MCA

REASON: The amendments to ARM 32.3.301 proposed in this notice will adopt and incorporate the federal disease program standards. The amendments to ARM 32.3.108 proposed in this notice will also centralize all department quarantine procedures. Together, these amendments will render the above-listed rules unnecessary. Repeal will advance the Governor's Red Tape Relief Initiative.

32.3.402 EXTENSION OF TIME LIMITS

AUTH: 81-2-102, 81-2-103, MCA
IMP: 81-2-102, MCA

32.3.407 DEPARTMENT ORDERED BRUCELLOSIS TESTING OF ANIMALS

AUTH: 81-2-102, 81-2-103, MCA
IMP: 81-2-102, 81-2-103, MCA

32.3.412 MEMORANDUM OF UNDERSTANDING

AUTH: 81-2-102, 81-2-103, MCA
IMP: 81-2-102, 81-2-103, MCA

32.3.418 INDEMNITY PAID FOR REACTORS

AUTH: 81-2-102, 81-2-103, MCA
IMP: 81-2-102, MCA

32.3.440 CERTIFIED BRUCELLOSIS FREE BOVINE HERDS

AUTH: 81-2-102, 81-2-103, MCA
IMP: 81-2-102, MCA

REASON: The U.S. Department of Agriculture determines certified brucellosis-free herd status as set forth in 9 CFR § 78.1. The amendments to ARM 32.3.411 and the adoption of NEW RULE I proposed in this notice will adopt and incorporate the federal disease program standards and render the above-listed rules unnecessary. The proposed amendments to ARM 32.3.108 will also centralize all department quarantine procedures. Repeal will advance the Governor's Red Tape Relief Initiative.

32.3.608 REPORTING DEATH OF ANIMALS FROM A TUBERCULOSIS QUARANTINED HERD

AUTH: 81-2-102, 81-2-103, MCA
IMP: 81-2-102, 81-2-103, MCA

REASON: This requirement is transferred to new ARM 32.3.108(7) as proposed to be amended in this notice. Repeal will advance the Governor's Red Tape Relief Initiative.

32.3.1305 DISCLOSURE OF INFORMATION

AUTH: 81-2-102, MCA
IMP: 81-2-103, MCA

REASON: This rule simply states what is already true and correct and does not impose any requirements. Repeal will advance the Governor's Red Tape Relief Initiative.

32.3.1507 EXHIBITIONS OF POULTRY

AUTH: 81-20-101, MCA
IMP: 81-20-101, MCA

REASON: This rule has not been updated since 1972, and it is no longer consistent with current department practice. The department does not have a presence at all at poultry exhibitions in the state to ensure enforcement. Repeal will advance the Governor's Red Tape Relief Initiative.

32.3.2006 INTRASTATE MOVEMENT OF CATTLE: IDENTIFICATION

AUTH: 81-2-102, 81-2-103, 81-2-104, MCA
IMP: 81-2-102, 81-2-103, 81-2-104, MCA

REASON: This rule is no longer consistent with current department practice regarding backtags, and its repeal will not increase the risk of disease or change how cattle moves within intrastate marketing channels. Repeal will advance the Governor's Red Tape Relief Initiative.

32.3.2303 DIAGNOSTIC TESTS

AUTH: 81-2-102, MCA
IMP: 81-2-102, MCA

REASON: This rule is no longer consistent with current department practice and requirements. The department is retaining administrative rules regarding the reporting of test results for specific diseases that are of concern to the department.

7. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Lindsey Simon, Department of Livestock, P.O. Box 202001, Helena, Montana, 59620-2001; telephone (406) 444-9321; fax (406) 444-1929; or e-mail MDOLcomments@mt.gov, and must be received no later than 5:00 p.m., August 23, 2024.

8. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Lindsey Simon at the address listed in paragraph 7 no later than 5:00 p.m., August 23, 2024.

9. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 1,400.

10. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 7 above or may be made by completing a request form at any rules hearing held by the department.

11. An electronic copy of this proposal notice is available through the Secretary of State's web site at rules.mt.gov.

12. The bill sponsor contact requirements of 2-4-302, MCA, apply only to proposed NEW RULE I. The primary bill sponsor, Representative Joe Read, was contacted by email on June 6 and 10, 2024, at joe.read@legmt.gov, and by U.S. mail on June 10, 2024.

13. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption, amendment, and repeal of the above-stated rules will not significantly and directly impact small businesses.

/s/ Lindsey R. Simon
Lindsey R. Simon
Rule Reviewer

/s/ Michael S. Honeycutt
Michael S. Honeycutt
Executive Officer
Department of Livestock

Certified to the Secretary of State July 16, 2024.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULES I through XIV pertaining to licensure of abortion clinics	)))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On August 16, 2024, at 2:00 p.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed adoption of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/83348476453?pwd=QW00d0pkaEdOblZwbm5lelBsQ1BVUT09, meeting ID: 833 4847 6453, and password: 490712; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 833 4847 6453, and password: 490712. Find your local number: https://mt-gov.zoom.us/u/kdQgXwAKfg.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on August 2, 2024, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov.

3. The rules as proposed to be adopted provide as follows:

NEW RULE I PURPOSE (1) The purpose of these rules is to establish the minimum licensing requirements for the licensure of abortion clinics, pursuant to Title 50, chapter 20, part 9, MCA.

(2) For purposes of this subchapter, abortion clinics include facilities described at 50-20-901, MCA.

(3) Terms used in these rules will have the definitions provided in 50-20-901, MCA.

(4) The minimum licensing requirements established by these rules are designed to encompass the requirements which an abortion clinic must meet if it performs or provides all legally permissible abortions.

(5) Certain of these requirements may be waived if not necessary in light of the scope of, and any gestational limits on, the abortions to be performed or provided by the applicant or licensed abortion clinic. The license issued by the department will identify such limitations on the scope and gestational age of abortions for which the abortion clinic is licensed, and the requirements that have

been waived as a result of such limitations. The failure to comply with such limitations will constitute a violation of the abortion clinic's license.

AUTH: 50-20-901, 50-20-903, MCA
IMP: 50-20-901, 50-20-902, 50-20-903, 50-20-904, MCA

NEW RULE II MINIMUM STANDARDS FOR ABORTION CLINICS: LICENSING (1) A clinic or other facility that performs surgical abortions or that provides abortion-inducing drugs to five or more patients each year must be licensed as an abortion clinic.

(2) An application for licensure of an abortion clinic must be received by the department, and must include:

(a) name of the applicant;

(b) location of the abortion clinic;

(c) administrator of the abortion clinic;

(d) medical director of the abortion clinic;

(e) qualifications of the administrator, medical director, and all professional staff;

(f) disclosures regarding:

(i) whether the applicant, owner, or affiliate has operated an abortion clinic that was closed as a direct result of issues of patient health and safety;

(ii) whether the owner or any clinic staff has been convicted of a felony offense; and

(iii) whether the owner or any clinic staff was ever employed by a facility owned or operated by the applicant that closed because of administrative or legal action;

(g) the type(s) of abortions the abortion clinic will perform or provide, and any gestational limits to such services; and

(h) an attestation that the applicant is of reputable and responsible character and is able to comply with all rules applicable to abortion clinics.

(3) An applicant must submit, with the application, administrative and legal documentation concerning information relating to (f); inspection reports, if any; and violation remediation contracts, if any.

(4) The abortion clinic will submit a license fee of $450 to the department with the initial application, and with each annual renewal application.

(5) The department will conduct inspections of abortion clinics as follows:

(a) Abortion clinics will receive an annual licensure inspection to determine compliance with the applicable Administrative Rules of Montana and Montana Code Annotated related to licensing of abortion clinics.

(b) If the department receives a complaint relating to an abortion clinic, it will conduct an investigation which may include additional inspection of the abortion clinic if needed to resolve the complaint.

(c) Licensed premises must be open to inspection by the department or its authorized representatives, and access to all records must be granted to the department, at all reasonable times.

(6) The department may deny, suspend, or revoke the license of an abortion clinic pursuant to 50-5-207, MCA.

AUTH: 50-20-903, MCA
IMP: 50-20-902, 50-20-903, 50-20-904, MCA

NEW RULE III MINIMUM STANDARDS FOR ABORTION CLINICS: PHYSICAL PLANT (1) An abortion clinic must be constructed and maintained so as to prevent as much as possible the entrance and harborage of insects, rodents, and other vermin capable of transmitting disease including, without limitation, rats, mice, mosquitos, and flies.

(2) Patient rooms within the abortion clinic must be, at minimum, 100 square feet.

(a) There must be 4-foot available space on 1 side of the examination table and 3-feet on all other sides.

(3) The facility must have, at minimum, 2 exits no more than 80 feet apart.

(a) All exits must have lit egress lighting paths leading to the exits.

(4) All corridors within an abortion clinic must be at minimum 6-foot in width.

(5) Locks are prohibited on all doors to which a patient may have access.

(6) Abortion clinics must comply with all local building authority requirements.

(7) Any provision of this rule may be waived at the discretion of the department if conditions in existence prior to the adoption of this rule or construction factors would make compliance extremely difficult or impossible and if the department determines that the level of safety to patients and staff is not diminished.

AUTH: 50-20-903, MCA
IMP: 50-20-903, MCA

NEW RULE IV MINIMUM STANDARDS FOR ABORTION CLINICS: POLICIES AND PROCEDURES (1) Each abortion clinic must have a policy and procedure manual that is readily available to all facility staff, the department, and patients.

(2) A documented review/update to the policy and procedure manual must be done biennially by the facility medical director.

(3) The policy and procedure manual must include a current organizational chart.

(4) At minimum, the manual must include policies and procedures on:

(a) the different services that are offered at the clinic;

(b) maintaining and securing medical records;

(c) security for both patients and staff;

(d) obtaining consent, including:

(i) informed consent by the patient;

(ii) parental consent and/or parental notification with respect to patients under the age of 18, to the extent legally permissible; and

(iii) wait time between consent and treatment;

(e) follow-up care;

(f) initial and ongoing staff training, including:

(i) training on mandatory reporter requirements; and

(ii) law enforcement training, or if law enforcement training is not available, training acceptable to the department, on identifying and assisting women and girls who are coerced into abortion or who are victims of rape, incest, or sex trafficking;

(g) provision to patients of a hotline telephone number to assist women and girls who are coerced into abortion or who may be victims of rape, incest, or sex trafficking;

(h) staff screening and acquisition of a background check;

(i) patient/clinical files, in accordance with [NEW RULE VII(3)];

(j) emergency procedures, in accordance with [NEW RULE IX(3)];

(k) types of anesthesia to be used by the abortion clinic, the conduct of anesthesia assessments, and the criteria to be used in conducting anesthesia assessments, in accordance with [NEW RULE X(1)(b) through (d), (3), and (4)]; and

(l) infection controls, in accordance with [NEW RULE XII(2) and (3)].

AUTH: 50-20-903, MCA
IMP: 50-20-903, MCA

NEW RULE V MINIMUM STANDARDS FOR ABORTION CLINICS: MEDICAL DIRECTOR QUALIFICATIONS (1) An abortion clinic must have a medical director who has a current physician license in good standing with the Montana Board of Medical Examiners.

(2) The medical director must obtain 8 continuing education units (CEUs) in abortions or a related subject annually.

(3) The medical director is responsible for:

(a) overseeing treatment delivered in the facility;

(b) developing and reviewing facility policies and procedures; and

(c) overseeing the performance of the medical staff.

(4) The medical director participates in establishing competency criteria for medical personnel, including training in procedures performed at the facility.

(5) The medical director can also serve as the abortion clinic administrator.

AUTH: 50-20-903, MCA
IMP: 50-20-903, MCA

NEW RULE VI MINIMUM STANDARDS FOR ABORTION CLINICS: STAFF FILES (1) The facility is responsible for maintaining a file on each employee. Employee files may be inspected by the department at any time. If the file is not maintained at the facility, it must be made available to the department within 24 hours of request.

(2) At a minimum, the employee file must contain:

(a) the employee's name;

(b) a job description signed by the employee;

(c) documentation of employee orientation, signed by the employee;

(d) a copy of current credentials, certification, or professional licenses required to perform the duties described in the job description;

(e) a name-based or FBI fingerprint background check; and

(f) documentation of annual training required in accordance with the policies adopted pursuant to [NEW RULE IV(4)(f)].

AUTH: 50-20-903, MCA
IMP: 50-20-903, MCA

NEW RULE VII MINIMUM STANDARDS FOR ABORTION CLINICS: PATIENT FILES (1) An individual clinical record must be established for each person receiving care. Each record must be accurate, legible, and promptly completed. The record must include at least the following:

(a) patient identification including the patient's full name, sex, address, date of birth, and next of kin;

(b) admitting diagnosis;

(c) significant medical history and results of physical examination;

(d) anesthesia reports;

(e) procedure reports;

(f) pertinent laboratory and pathology reports as indicated and tests for RH Negative factor. A pregnancy test or pathological exam of tissue shall be recorded to verify pregnancy;

(g) nurses' notes including admission, preoperative, and recovery;

(h) preoperative and postoperative orders;

(i) any allergies and abnormal drug reactions;

(j) discharge note, discharge diagnosis, and instructions given to the patient;

(k) documentation of properly executed informed patient consent which includes notice of transfer when deemed appropriate; and

(l) documentation:

(i) that the patient was provided a hotline telephone number for women who are coerced into an abortion or who are victims of rape, incest, or sex trafficking;

(ii) of the assistance provided to the patient if abortion clinic staff suspect the patient may be coerced into an abortion or may be the victim of rape, incest, or sex trafficking; and

(iii) of compliance with any applicable mandatory reporting requirements with respect to the patient.

(2) To ensure confidentiality, security, and physical safety of a patient's medical record, the abortion clinic must designate a person to oversee and manage the clinical records.

(3) The abortion clinic must have policies concerning clinical records. The policies must include:

(a) the retention of active records;

(b) the retirement of inactive records;

(c) the timely entry of data in records; and

(d) the release of information contained in records.

AUTH: 50-20-903, MCA
IMP: 50-20-903, MCA

NEW RULE VIII MINIMUM STANDARDS FOR ABORTION CLINICS: SANITATION (1) Each abortion clinic must ensure the premises and equipment be kept clean and free of vermin capable of transmitting disease, including without limitation, rats, mice, mosquitos, and flies.

(2) An abortion clinic must provide housekeeping services on a daily basis.

(3) Garbage and waste receptacles must be collected, stored, and disposed of in a manner designed to prevent the transmission of disease. Containers must be washed and sanitized before being returned to work areas.

(4) Suitable equipment for rapid and routine sterilization must be available to ensure the operating room materials are sterile. Sterilized materials must be packaged, labeled, and stored in a manner to maintain sterility and identify sterility dates. Sterility requirements also include:

(a) processes for cleaning and sterilization of supplies and equipment complying with manufacturer's instructions and recommendations; and

(b) internal and external indicators demonstrating a high level of disinfection and sterilization.

AUTH:50-20-903, MCA
IMP: 50-20-903, MCA

NEW RULE IX MINIMUM STANDARDS FOR ABORTION CLINICS: EMERGENCY PROCEDURES (1) Staff trained in the use of emergency equipment and in cardiopulmonary resuscitation must be available whenever there is a patient in the abortion clinic.

(2) The following equipment shall be available to the operating room: emergency call system; oxygen; assistance equipment, including airways and manual breathing bag; sonography; and emergency drugs and supplies specified by the medical staff.

(3) The abortion clinic must have a written transfer agreement with a hospital, critical access hospital, or rural emergency hospital, for transfer of patients experiencing a medical emergency.

(4) The abortion clinic must have policies and procedures in the event of emergency with documented staff training in:

(a) hemorrhage;

(b) perforation;

(c) respiratory distress/arrest;

(d) anaphylaxis; and

(e) emergency transfer to the facility with which the abortion clinic has a written transfer agreement.

AUTH: 50-20-903, MCA
IMP: 50-20-903, MCA

NEW RULE X MINIMUM STANDARDS FOR ABORTION CLINICS: ANESTHESIA (1) The abortion clinic must:

(a) prohibit the use of flammable anesthesia;

(b) have a policy which defines the types of anesthesia that will be used within the abortion clinic;

(c) conduct an assessment prior to the patient's admission as well as prior to surgical abortion to evaluate the risk of anesthesia and of the procedure to be performed; and

(d) have policies that address the pre-operative assessment, the post-anesthesia assessment, and the basis or criteria used in conducting such assessments; and

(e) prevent recirculation of smoke originating within the surgical suite.

(2) Anesthesia must be administered only by a physician qualified to administer anesthetic agents or a certified registered nurse anesthetist (CRNA).

(3) A pre-operative evaluation of the patient within 24 hours of surgical abortion shall be done by a physician to determine the risk of and anesthesia needed for the procedure.

(4) Before discharge, each patient who received anesthesia must be evaluated by a physician or by a CRNA in accordance with applicable state health and safety laws, standards of practice, and abortion clinic policy. This post-anesthesia assessment must include evaluation of:

(a) respiratory function, including respiratory rate, airway patency, and oxygen saturation;

(b) cardiovascular function, including pulse rate and blood pressure;

(c) mental status and level of consciousness;

(d) temperature;

(e) pain;

(f) nausea and vomiting; and

(g) postoperative hydration.

AUTH: 50-20-903, MCA
IMP: 50-20-903, MCA

NEW RULE XI MINIMUM STANDARDS FOR ABORTION CLINICS: QUALITY ASSURANCE (1) Abortion clinics must have a quality assurance program that:

(a) is ongoing;

(b) is data-driven;

(c) is broad in scope;

(d) addresses clinical and administrative issues as well as actual patient outcomes;

(e) has a defined set of quality improvement goals and objectives;

(f) actively seeks patient feedback, evaluates complaints and suggestions, and works to improve patient satisfaction;

(g) includes the active participation of the medical staff; and

(h) respects the health care rights of all patients, including the right to privacy.

AUTH: 50-20-903, MCA
IMP: 50-20-903, MCA

NEW RULE XII MINIMUM STANDARDS FOR ABORTION CLINICS: INFECTION PREVENTION AND CONTROL (1) The abortion clinic must maintain an infection prevention and control program that seeks to minimize infections and communicable diseases. The abortion clinic is responsible for providing a plan of action for preventing, identifying, and managing infections and communicable diseases, and for immediately implementing corrective and preventive measures that result in improvement.

(a) The infection prevention and control program must include documentation that the abortion clinic has considered, selected, and implemented nationally recognized infection control guidelines.

(b) The infection prevention and control program is under the direction of a designated and qualified infection control officer who is a licensed health care professional and has training in infection control.

(2) The abortion clinic must have written policies that also address cleaning of patient treatment and care areas, including:

(a) cleaning before use; and

(b) cleaning between patients.

(3) The abortion clinic must have policies and processes in place for:

(a) the monitoring and documentation of the cleaning, high level disinfection, and sterilization of medical equipment, accessories, instruments, and implants; and

(b) minimizing the sources and transmission of infections, including adequate surveillance techniques.

(4) A system must exist for the proper identification, management, handling, transport, storage, and disposal of biohazardous materials and medical wastes, whether solid, liquid, or gas.

AUTH: 50-20-903, MCA
IMP: 50-20-903, MCA

NEW RULE XIII MINIMUM STANDARDS FOR ABORTION CLINICS: SAFETY (1) The abortion clinic must designate a safety officer who is responsible for the facility's safety plan.

(2) The abortion clinic must have a safety program which addresses the organization's environment of care and safety for all patients, staff, and others. The elements of the safety program must include:

(a) a process for identifying hazards, potential threats, near misses, and other safety concerns;

(b) a process for reporting known adverse incidents to proper authorities;

(c) a process for reducing and avoiding medication errors; and

(d) prevention of falls or physical injuries involving patients, staff, and others.

(3) Products that carry an expiration date, including medications, reagents, and solutions, are monitored and disposed of accordingly.

(4) Prior to use, appropriate education is provided to intended operators of newly acquired devices or products to be used in the care of patients.

AUTH: 50-20-903, MCA

IMP: 50-20-903, MCA

NEW RULE XIV MINIMUM STANDARDS FOR ABORTION CLINICS: EMERGENCY PREPAREDNESS (1) Abortion clinics must develop a written disaster plan in conjunction with emergency services in the community.

(2) Abortion clinics must conduct a review or physical exercise of such procedures at least once a year, and prepare and retain on file, for a minimum of three years, a written report that includes:

(a) date and time of the review or exercise;

(b) the names of staff involved in the review or exercise;

(c) the names of other health care facilities, if any, which were involved in the review or exercise;

(d) the names of other persons involved in the review or exercise;

(e) a description of all phases of the procedure and suggestions for improvement; and

(f) the signature of the person conducting the review or exercise.

(3) Fire drills must be conducted twice annually no closer than four months apart.

AUTH: 50-20-903, MCA
IMP: 50-20-903, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to adopt NEW RULES I through XIV.

The 2023 Legislature passed House Bill 937, an act requiring the licensing of abortion clinics. The bill was signed by the Governor on May 16, 2023. The department proposes to adopt NEW RULES I through XIV to establish licensing requirements for abortion clinics. To ensure the health, safety, and welfare of the patients served by these facilities, NEW RULES I through XIV provide requirements on emergency preparedness, emergency procedures, staff training, infection control, content and protection of patient and staff files, and policies to guide operations within the facility. Most of the proposed requirements for abortion clinics are based on the licensure and regulatory requirements for outpatient centers for surgical services, while some are derived from the regulatory requirements and minimum standards imposed on all health care facilities. In the department's judgment, these current regulatory requirements represent the appropriate level of regulatory requirements to impose on abortion clinics.

NEW RULE I
The department proposes to adopt this new rule to provide the purpose for the new rules, namely the licensure of abortion clinics in the state of Montana, consistent with the definitions and requirements set forth in HB 937, codified at 50-20-901 through 50-20-904, MCA. The department notes that the statutory definition of "abortion clinic" excludes hospitals and critical access hospitals. The department asks for

comments on whether, consistent with the apparent intent of the Legislature, rural emergency hospitals – a new category of hospital created by the Legislature in 2023 – should be administratively excluded from the definition of "abortion clinic."

As noted above, the department proposes licensure and regulatory requirements for abortion clinics based on outpatient centers for surgical services (also known as ambulatory surgical centers) – and based on the assumption that an abortion clinic would provide the full range of legally permissible abortions. The department recognizes that some abortion clinics may choose to provide a narrower range of abortion services. Consequently, the department proposes that it may waive certain regulatory requirements based on the scope of abortion services and any gestational limits identified in the abortion clinic's application. Under the proposed rule, the department would identify these items in the license issued to the abortion clinic. The abortion clinic would be required to comply with these limitations; failure to do so would constitute a violation of the clinic's license.

NEW RULE II

The department proposes to adopt this new rule to provide guidelines on initial and renewal licensing. NEW RULE II would implement 50-20-902, 50-20-904, and several provisions in 50-20-903, MCA.

Proposed NEW RULE II(1) is intended to follow the definition of "abortion clinic" in 50-20-901, MCA.

Proposed NEW RULE II(2) largely follows the requirements of 50-20-902(2), MCA, with slight language modifications for clarity. Because the department's licensure requirements for other health care facilities include the requirement for a medical director, the department proposes to require abortion clinics to have a medical director and to include the name of the medical director and his/her qualifications in the license application. The department also proposes to require the applicant to identify the type(s) of abortions the abortion clinic applicant will perform or provide and any gestational limitations to such services. This would permit the department to assess whether any regulatory requirements can be waived. The department would interpret the statutory requirement in 50-20-902(2)(a), MCA, and the proposed implementing regulatory provision in NEW RULE II(2)(h) as consistent with, and aligning to, the requirements imposed on health care facilities and applicants for health care facility licenses under 50-5-207, MCA. The attestation that the applicant is of reputable and responsible character (and is able to comply with all rules applicable to abortion clinics) would, thus, be that the applicant (1) is in good standing with the law and does not have any fraudulent past history (consistent with 50-2-207(1)(c), MCA), (2) has sufficient qualified staff and the financial ability to operate the facility in accordance with the law and rules or standards adopted by the department, (3) has no history or reports of cruelty or indifference affecting the welfare of patients or residents, (4) has no history or reports of misappropriation of the property or funds of a patient or resident or of conversion of a patient's or resident's property without their permission, and (5) has not violated any provision of Title 50, chapter 5, parts 1 through 3, MCA. The department anticipates that it would

not investigate an applicant's attestation unless warranted due to findings during an inspection or investigation or credible information is otherwise brought to its attention that is in conflict with the attestation.

NEW RULE II(3) and (4) would implement 50-20-902(3) and 50-20-903(2)(d)(ii), MCA, application requirements and fees, respectively.

NEW RULE II(5) would implement 50-20-903(2)(e) and 50-20-904, MCA, on abortion clinic inspections, and, consistent with ARM 37.106.310(4), health care facility licensing, permit the department to inspect the licensed premises and access its records at all reasonable times.. Finally, NEW RULE II(6) would implement the requirement of 50-20-903(2)(f), for procedures to address violations, by incorporating by reference 50-5-207, MCA.

NEW RULE III

The department proposes to adopt this new rule to provide standards in the physical plant of abortion clinics while also giving the department authority to waive certain requirements for existing structures. This new rule would implement 50-20-903(2)(b)(i) and (ix). The proposed requirements in NEW RULE III(1) would be based on ARM 37.106.321(1). The department proposes the requirements based on the 2018 edition of the American Institute for Architects (AIA) Guidelines for Design and Construction of Hospitals and Health Care Facilities. From this edition, the department referenced chapters pertaining to standards for all health care facilities, outpatient centers for surgical services, and birthing centers.

The proposed requirement in NEW RULE III(6) for compliance with local building authority requirements is drawn from ARM 37.106.508(3)(a), which requires outpatient centers for surgical services to comply with all local jurisdiction requirements, including state and local codes for construction.

NEW RULE IV

The department proposes to adopt this new rule that sets forth specific policies needed by abortion clinics for safe operational standards and file retention and protection, with a requirement for reviewing of policies and availability of policies. NEW RULE IV would implement a number of specific requirements in 50-20-903, MCA.

The proposed requirements of NEW RULE IV(1) through (3) are based on the general requirements in ARM 37.106.330(1), which require health care facilities to maintain a policy and procedure manual that is reviewed by the medical director or administrator at least annually. These proposed requirements reflect best practices for health care facilities.

The department also proposes that abortion clinics be required to adopt policies on certain specific topics in NEW RULE IV(4):

- The different services that are offered at the clinic. The abortion clinic would be required to identify in its policy and procedures manual the types of abortion services offered (and any limitations), consistent with its license, as well as any other services it offers. This proposed requirement is based on and is consistent with ARM 37.106.508(2)(c).
- Maintenance and security of patient records: This would implement 50-20-903(2)(c), MCA, and is consistent with regulatory requirements applicable to outpatient centers for surgical services. *See* ARM 37.106.512.
- Patient and staff security: This proposed policy requirement is consistent with requirements currently applicable to outpatient centers for surgical services. *See* ARM 37.106.507(1)(j).
- Obtaining consent: Informed consent is an important aspect of all medical treatment. Accordingly, the department proposes that abortion clinics have a policy and procedure on obtaining informed consent. Similarly, for minors, parental consent and/or notification are important. However, because the department recognizes that there is ongoing litigation on the constitutionality of parental notification and/or consent requirements, the department proposes to require such policies to the extent that requirements for parental notification and/or consent are legally permissible.
- Follow-up care: Follow-up care is important for patients of same-day facilities and clinics. Follow-up care consists of instructions on what to expect for the next few days to few weeks after the patient leaves the clinic, instructions for the patient on caring for themselves after they leave the clinic, and criteria for when to seek emergency medical treatment due to complications.
- Staff Training: Staff training is an important aspect of ensuring staff are and remain qualified for their positions; accordingly, the department proposes to require policies and procedures on the subject. This training would include:
    - Mandatory reporter training: Health care providers, including certain abortion clinic staff, are mandatory reporters. Consequently, the department proposes to require abortion clinics have policies on ensuring that staff are trained on any mandatory reporter obligations.
    - Training on identifying and assisting women and girls who are coerced into abortion or who are victims of rape, incest, or sex trafficking. This proposed requirement would implement, clarify, and expand on 50-20-903(2)(b)(xi), MCA. The department proposes to expand the required training to include not only sex trafficking, but also rape and incest. In case law enforcement does not provide such training, the department would require that the training be acceptable to the department. The department proposes to include girls in the provision to clarify that females of all ages may be coerced into abortion or be victims of rape, incest, or sex trafficking and that the training should reflect that.
- Provision of hotline number to patients to assist women and girls who may be coerced into abortion or who are victims of rape, incest, or sex

trafficking. This proposed required policy and procedure would implement 50-20-903(2)(b)(x), MCA, with clarifications and expansions similar to the above.

- Staff screening and background checks: This proposed requirement would implement 50-20-903(2)(b)(ii), MCA.

Finally, so that all required policies are identified in NEW RULE IV for ease of reference, the department includes cross-references to other proposed rules which contain requirements for certain, specific policies.

NEW RULE V

The department proposes to adopt this new rule that sets forth the requirement for abortion clinics to have a medical director and qualifications for the medical director to ensure services provided to patients are overseen by a physician. The department proposes this requirement pursuant to 50-20-903(2) and (2)(b)(ii), MCA. The department bases these proposed requirements on a review of requirements for medical directors or administrators of other health care facilities.

The department notes that the medical director for an abortion clinic does not need to be physically present at the abortion clinic and that a physician can act as the medical director of more than one abortion clinic or other health care facility.

NEW RULE VI

The department proposes to adopt this new rule to establish documentation needed in all employee files to ensure that staff are trained, have correct credentials, and are safe to be working in the facility. NEW RULE VI would implement 50-20-903(2)(b)(ii), MCA. These proposed requirements are based on, and consistent with, the requirements in ARM 37.106.315, minimum standards for employee files of health care facilities. In addition, to ensure that the department can easily audit compliance with staff training requirements, it proposes to require that employee files contain documentation of employee completion of annual training.

NEW RULE VII

The department proposes to adopt this new rule to establish required documentation to be completed and retained in patient files, how long patient files are to be retained, and the protection of patient files. NEW RULE VII would implement 50-20-903(2)(b)(x) and (xi) and (2)(c), MCA. The department proposes NEW RULE VII based, in part, on ARM 37.106.512, establishing requirements for clinical records to be established and maintained by outpatient centers for surgical services. In addition, the department proposes to require certain documentation be placed into the patient's records:

- Admitting diagnosis is relevant to a medical chart to know why the patient is receiving the treatment that they are.
- Reports of what procedure was conducted, how the procedure was executed, if there were complications, and what the end result was of the procedure. These reports may be important to have on record if there is a

complication that requires someone to receive emergency medical care, or as evidence of procedural follow through if a complaint arises.

- Laboratory tests on patients receiving surgery or medications that may affect a person's hormone system is vital in ensuring accuracy of treatment, and ensuring there are not underlying conditions that may affect treatment or have additional risk factors. RH Negative Factor is recommended for gestational ages of eight weeks or more. RH incompatibility can cause problems with future pregnancies if not treated.
- Nurses' notes covering admission, preoperative and recovery periods are important because they provide the record of discussions between patient and practitioner or nurse, nursing assessments which often include vitals and over all general health, if medications or treatments were prescribed by the practitioner were carried out and how they were tolerated, and in recovery, nurses' notes covering the nursing assessments which often include vitals, general health, and response to procedure or treatment.
- Documentation of preoperative and postoperative instructions is important to a patient record to indicate what tasks were to be performed by nursing staff or the patient prior to receiving treatment and what medications or treatments were administered or provided after a procedure.
- Since 50-20-903(2)(b)(x), MCA, requires that there be rules on the provision to patients of a hotline telephone number to assist women who are coerced into an abortion or who are victims of sex trafficking, the department proposes to require documentation that each patient was provided such notice be included in the patient's record.
- Section 50-20-903(2)(b)(xi), MCA, requires annual training on identifying and assisting women who are coerced into an abortion or who are victims of sex trafficking (and the department is proposing administratively to encompass both women and girls and to encompass victims of rape and incest, as well as sex trafficking). The implication of this requirement is that abortion clinic staff are expected to do something if they identify such a woman (or girl). Accordingly, the department proposes to require documentation of any such assistance be placed into a patient's records if she is so identified.
- Health care providers, including those employed by abortion clinics, are mandatory reporters. Consequently, the department proposes to require documentation of compliance with any mandatory reporting requirement be included in the patient's record.

NEW RULE VIII

The department proposes to adopt this new rule to ensure that abortion clinic facilities and the equipment used in them are kept clean, sterile, and in good condition. NEW RULE VIII would implement 50-20-903(2)(b)(i), MCA. The proposed requirements are taken from, and based on, existing health care facility regulatory requirements for sanitation. The department proposes NEW RULE VIII(1) based on ARM 37.106.321(1), in a rule on environmental control for health care facilities. NEW RULE VIII(2) would be based on ARM 37.106.320(2), in a rule on physical plant and equipment maintenance for health care facilities. NEW RULE

VIII(3) would be based on best infection control practices for health care facilities. Finally, the department proposes NEW RULE VIII(4) based on ARM 37.106.515(8), applicable to outpatient centers for surgical services. The proposed requirements reflect best practices for health care facilities.

NEW RULE IX

The department proposes to adopt this new rule to ensure the health, safety, and welfare of the patients receiving services by requiring training and policies for emergency health situations. NEW RULE IX would implement 50-20-903(2)(b)(iv) and (vi), MCA. The proposed requirements are taken from, and based on, best training practices for facilities that perform surgical procedures. Surgical procedures can produce immediate and life-threatening situations. It is imperative that equipment be available for emergency situations, and that staff be trained on the use of the equipment procedures of the clinic for the emergent event. The requirement for a transfer agreement is taken from ARM 37.106.506(1)(d), an Outpatient Center for Surgical Services regulation. This requirement is important to facilitate swift and immediate care by a local hospital in the event of an emergency.

NEW RULE X

The department proposes to adopt this new rule to establish requirements for the use of anesthesia for surgical abortions, who can administer anesthesia, and require post operative assessments to ensure the health, safety, and welfare of the patient. NEW RULE X would implement 50-20-903(2)(b)(v), MCA. The proposed requirements are taken from, and based on, ARM 37.106.514, which contains regulatory requirements for outpatient centers for surgical services on anesthesia risk and evaluation. They represent best practices for such health care facilities.

NEW RULE XI

The department proposes to adopt this new rule establishing a quality assurance program to determine if specific quality improvement objectives and goals are being met. NEW RULE XI would implement the requirements of 50-20-903(2)(b)(vii), MCA. The proposed requirements are taken from, and based on, ARM 37.106.508(4)(c)(i) through (viii), but would omit other requirements in that administrative rule, which establishes operational standards for, among other things, quality assurance/quality improvement programs for outpatient centers for surgical services. They reflect best practices for the development of a quality assurance/quality improvement program for health care facilities, including those that perform surgical procedures on an outpatient basis.

NEW RULE XII

The department proposes to adopt this new rule establishing infection control requirements to ensure that the facility is monitoring and attempting to minimize infections and communicable diseases. NEW RULE XII would implement 50-20-903(2)(b)(viii), MCA. The proposed requirements are taken from, and based on, ARM 37.106.513(1) through (3) and (10), which establish minimum standards for infection prevention, control, and safety for outpatient centers for surgical services.

They represent best practices on infection prevention and control for health care facilities.

NEW RULE XIII

The department proposes to adopt this new rule requiring abortion clinics to have a safety program and establish a safety officer who is responsible for facilitating the plan. NEW RULE XIII would implement 50-20-903(2)(b)(vii) and (viii), MCA. The proposed requirements are taken from, and based on, ARM 37.106.513(4), (5), (8), and (9), which establish minimum standards for outpatient centers for surgical services on infection prevention, control, and safety. They represent best practices on the subject for health care facilities and health care facilities that may perform surgical procedures on an outpatient basis.

NEW RULE XIV

The department proposes to adopt this new rule requiring abortion clinics to have emergency and disaster planning, for it to be in conjunction with other emergency services within their communities, and to require review/drills of emergency plans annually to ensure that in the event of a disaster, facility staff are aware of what to do to ensure patient and staff safety. NEW RULE XIV would implement 50-20-903(2)(b)(iv), MCA. The proposed requirements in NEW RULE XIV are taken from, and based on, ARM 37.106.322, which contains minimum standards for all health care facilities with respect to disaster planning. They represent best practices in the area of health care facility emergency and disaster planning.

Fiscal Impact

The department estimates that there are five abortion facilities in Montana that would be required to obtain a license under HB 937. Accordingly, the department estimates that the license application fee of $450 per license application or renewal would generate $2,250 on an annual basis. The department asks for comment on these estimates.

5. The department intends these licensure requirements to be effective upon adoption. Current facilities performing abortions will be afforded 30 days to submit an application for licensure as an abortion clinic, and the department will act on such applications within 60 days of receipt.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., August 23, 2024.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Written requests may be mailed or delivered to the contact person in 6 above.

9. An electronic copy of this notice is available on the department's web site at https://dphhs.mt.gov/LegalResources/administrativerules, or through the Secretary of State's web site at rules.mt.gov.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by email on September 5, 2023.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Gregory Henderson
Gregory Henderson
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State July 16, 2024.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.40.1002, 37.40.1005, and 37.40.1018 pertaining to community first choice services	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 15, 2024, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/81153224911?pwd=RlhUdktTNzEzTEV1WGtySldJUHdXUT09 meeting ID: 811 5322 4911, and password: 831582; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 811 5322 4911, and password: 831582. Find your local number: https://mt-gov.zoom.us/u/keDOdao0v1.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on August 1, 2024, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

37.40.1002 AGENCY-BASED AND SELF-DIRECTED COMMUNITY FIRST CHOICE SERVICES: ELIGIBILITY, SERVICES PROVIDED, AND LIMITATIONS

(1) through (7) remain the same.

(8) ~~CFCS may not typically be provided in group home settings unless prior authorized by the department. Group home settings include licensed youth foster homes, mental health group homes, and adult intensive community home services. CFCS may be authorized when the person's medical needs are beyond the scope of services normally provided by programs funding services in the group setting. For example, a person requiring additional assistance because of an acute medical episode or post-hospitalization period may receive CFCS in a youth foster home setting.~~ CFCS services will be provided only in residential settings that the department determines meet the Home and Community-Based Setting requirements described in 42 C.F.R. § 441.530.

(9) remains the same.

(a) persons ~~who reside~~ residing in a hospital, a hospital~~s~~ providing long-term care, or a long-term care facility as defined in 50-5-101, MCA, and licensed under 50-5-201, MCA;

(b) remains the same.

(c) persons who live in homes ~~which~~ that are not safely accessible by normal modes of transportation.

(10) CFCS may not include any skilled services that require professional medical training unless otherwise permitted under 37-8-103, MCA~~, or ARM 24.159.1616~~.

(11) CFCS do not include services ~~which~~ that maintain an entire household. CFCS do not include:

(a) through (f) remain the same.

(12) ~~CFCS provided by a member of the member's immediate family is not CFCS for the purposes of the Medicaid program, and is not eligible for reimbursement. Immediate family member includes the following~~ Payment to legally responsible persons for CFCS is available when an individual requires extraordinary care. An individual is considered to require extraordinary care, as demonstrated by a state-approved functional assessment, when needs exceed the ordinary care that would be provided to a person without a disability of the same age. A legally responsible person may also be paid for services that are not considered extraordinary when an individual is unable to access non-legally responsible personal care providers because of geographic, cultural, or other factors limiting availability of care providers. A legally responsible person is defined as a:

(a) ~~a~~ spouse; or ~~and~~

(b) ~~a~~ natural, adoptive, or foster parent of a minor child.

(13) remains the same.

(14) CFCS may not be provided to relieve a parent of child-caring or other legal responsibilities. CFCS for children with disabilities may be appropriate when the parent is unqualified or otherwise unable to provide services, and the child is at risk of institutionalization unless the services are provided.

AUTH: 53-2-201, MCA
IMP: 53-2-201, 53-6-113, MCA

37.40.1005 AGENCY-BASED AND SELF-DIRECTED COMMUNITY FIRST CHOICE SERVICES: PERSON-CENTERED PLAN REQUIREMENTS (1) through (3) remain the same.

(4) The member and plan facilitator must meet to complete a person-centered plan that identifies, in writing, member-specific goals and objectives for the delivery of CFCS. The plan facilitator must ensure the person-centered plan is completed prior to service delivery and renewed at least annually. The person-centered plan must indicate that the residential setting of the member meets the Home and Community-Based Setting requirements described in 42 CFR § 441.530. The person-centered plan will be based on the member's functional assessment and service profile as provided by the quality improvement organization.

(a) through (6) remain the same.

(7) If a member is at high risk for institutionalization or in need of temporary CFCS, the provider agency may implement services immediately that include assistance with the activities of daily living without the functional assessment, service profile, and person-centered plan in place. In this case, the provider agency must implement a temporary service plan. The provider agency must use a department-approved form to document the temporary service plan. The temporary service plan must prescribe in writing the member's medical and functional need for service. The provider must refer the member to the quality improvement organization for a functional assessment by the 28th day of the temporary service plan, or they must discharge the member.

(a) In self-directed CFCS, the health care professional must complete the health care professional authorization form prior to the delivery of services, and the provider agency oversight staff must complete and sign the service plan prior to the delivery of services.

(b) through (10) remain the same.

AUTH: 53-2-201, MCA
IMP: 53-2-201, 53-6-113, MCA

37.40.1018 SELF-DIRECTED COMMUNITY FIRST CHOICE SERVICES: PROVIDER REQUIREMENTS (1) through (6) remain the same.

(7) A provider of services must ensure that the services adhere to the requirements of 42 C.F.R. § 441.530, which permits reimbursement with Medicaid monies only for services within settings that meet certain qualities set forth under the regulation.

(8) For the purpose of this subchapter, the department adopts and incorporates by reference 42 C.F.R. § 441.530, as amended January 16, 2014. A copy of this regulation may be obtained at https://www.ecfr.gov/ or by contacting the Department of Public Health and Human Service, Senior and Long-Term Care Division, P.O. Box 4210, Helena, MT 59604-4210.

AUTH: 53-2-201, MCA
IMP: 53-2-201, 53-6-113, MCA

4. STATEMENT OF REASONABLE NECESSITY

Montana Medicaid provides Community First Choice Services under its State Plan pursuant to section 1915(k) of the Social Security Act. Community First Choice Services provide community-based attendant services and supports to eligible Medicaid enrollees. These services must comply with federal Home and Community-Based Setting requirements under 42 C.F.R. § 441.530.

The proposed rule amendments are necessary to ensure Community First Choice Services meet the requirements of 42 C.F.R. § 441.530, which is intended to ensure, among other things, individuals receiving Community First Choice Services have access to the greater community, including opportunities to seek employment and work in competitive settings, to engage in community life, to control personal

resources, and to receive services in the community, to the same degree of access as individuals not receiving such services. The proposed rule amendments are also necessary to ensure the rules align with the Community First Choice Services State Plan Amendment (MT 23-007), which was updated to align with 42 CFR § 441.530 and to allow legally responsible individuals to be paid as caregivers.

Fiscal Impact

There is no anticipated fiscal impact associated with this rulemaking.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., August 23, 2024.

6. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Written requests may be mailed or delivered to the contact person in 5 above.

8. An electronic copy of this notice is available on the department's web site at https://dphhs.mt.gov/LegalResources/administrativerules, or through the Secretary of State's web site at rules.mt.gov.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

11. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement

and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Robert Lishman
Robert Lishman
Rule Reviewer

/s/ Robert Siedlecki
Robert Siedlecki, Deputy Director
Department of Public Health and Human Services

Certified to the Secretary of State July 16, 2024.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULE I pertaining to allocation and expenditure of HB 872 funds for capital projects	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On August 19, 2024, at 3:00 p.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed adoption of the above-stated rule. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/82627745575?pwd=ub5FwWX0lrZp0nEQw2W5IgL0oUWmDl.1, meeting ID: 826 2774 5575, and password: 207685; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 826 2774 5575, and password: 207685. Find your local number: https://mt-gov.zoom.us/u/kdXcpwaFvG.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on August 5, 2024, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov.

3. The rule proposed to be adopted provides as follows:

NEW RULE I ALLOCATION OF FUNDS APPROPRIATED TO THE DEPARTMENT OF ADMINISTRATION FOR BEHAVIORAL HEALTH SYSTEM FOR FUTURE GENERATIONS CAPITAL PROJECTS (1) The purpose of this rule is to establish the process by which the funds appropriated to the Department of Administration (DOA) for capital projects in connection with the behavioral health system for future generations initiative will be allocated and spent under section 9, ch. 739, Montana Laws 2023.

(2) The department will use the same process for the identification and approval of capital projects and the allocation of the appropriated funds referenced in (1) for such capital projects as for the other BHSFG initiatives. If any part of such process is infeasible in the department's judgment, the department will use an equivalent alternative approach.

(3) Upon approval by the Governor of a capital project concept, a project plan for the capital project shall be developed by the department and approved by the BHSFG Commission. The project plan may be revised and updated as needed.

The funds allocated to the capital project from the amounts referenced in (1) shall be expended pursuant to the project plan.

(4) The department shall consult with the Architecture and Engineering Division of the Department of Administration on the proposed capital projects to be funded with the appropriations referenced in (1).

(5) Upon approval of a capital project concept by the Governor and approval of the project plan for an approved capital project by the BHSFG Commission, the department will notify the Department of Environmental Quality of the project for potential inclusion in the state building energy conservation program. The department will use any funds provided under the state building energy conservation program to offset or add to the allocated and authorized funding for the project.

AUTH: Sec. 4(1), Ch. 739, L. 2023
IMP: Sec. 2, 4, 9, 11, Ch. 739, L. 2023

4. STATEMENT OF REASONABLE NECESSITY

Through this rulemaking, the Department of Public Health and Human Services (department) proposes to implement the requirement in section 4 of HB 872 that it adopt administrative rules that define how the appropriations to the Department of Administration for capital projects for behavioral health system for future generations capital development will be allocated and spent.

HB 872, addressing the Behavioral Health System for Future Generations (BHSFG), was passed by the Montana Legislature during the 2023 Legislative Session and signed by Governor Greg Gianforte on May 22, 2023. HB 872 provides a generational investment to reform and improve Montana's behavioral health and developmental disabilities service systems. HB 872 provided for (1) a $300 million investment to expand intensive and community-based behavioral health care and developmental disabilities services across Montana, (2) a commission to recommend how funds allocated to the department in the BHSFG fund should be expended, and (3) a process by which such recommendations would be reviewed and approved. Of that $300 million, a total of $75 million was authorized and appropriated for capital projects:

- $20 million was appropriated to the department from the capital development long-range building program account for the biennium beginning July 1, 2023, for the acquisition of new or remodeling of existing infrastructure or property to support the establishment of behavioral health settings and intermediate care facilities for individuals with intellectual disabilities. HB 872 §§ 12(1), 3(3)(d).
- $55 million is appropriated to the Department of Administration (DOA) from the capital developments long-range building program account for BHSFG capital development, after the adoption of the administrative rules and the BHSFG Commission transmits its summary report on its recommendations to the Governor pursuant to the process established in section 2 of HB 872. HB 872, sec. 9.

As noted above, this proposed rule would satisfy the requirements of section 4 of HB 872 (sec. 4, ch. 739, L. 2023) that the department adopt administrative rules that define how the appropriations for capital projects would be allocated and spent under section 9, on the appropriation of $55 million to DOA for BHSFG capital projects.

NEW RULE I(1) would set forth the purpose of the proposed rule: to address how funds appropriated to DOA for BHSFG capital projects would be allocated and spent. The proposed rule would not apply to the $20 million appropriated to the department for capital projects because, as the department interprets HB 872, the administrative rules are only to address the funds appropriated to DOA under section 9; the $20 million were appropriated to the department under section 12(1) of HB 872.

With respect to the identification of capital projects and the allocation of DOA-appropriated funds for such projects, the department believes that it is appropriate to use the same process established in HB 872 for other BHSFG initiatives. Accordingly, in NEW RULE I(2), the department proposes to use the process set forth in section 2 of HB 872 for the identification of capital projects to be funded by the appropriation referenced in (1) of the proposed rule, as well as how the funds should be allocated among such capital projects. The department is in the process of soliciting input on potential BHSFG capital projects through the issuance of two requests for information (RFIs), and is already working with the BHSFG Commission on issues relating to capital projects. Recognizing that such process may not be wholly feasible for capital projects, the department proposes that if, in the department's judgment, any part of the section 2 process is infeasible with respect to capital projects, the department will use an equivalent alternate approach to achieve the objective.

The department proposes NEW RULE I(3) to fulfill the section 4 requirement that the administrative rules define how the section 9 appropriation would be spent. The department proposes that the funds allocated to a capital project be spent in accordance with the approved project plan for the capital project. The department further proposes the project plan could be revised and updated as needed to meet the needs of the capital project.

Since this proposed rule would establish how the appropriation to DOA for BHSFG capital projects is to be allocated and spent, NEW RULE I(4) would provide that the department will consult with DOA's Architecture and Engineering Division on the capital projects.

NEW RULE I(5) would help implement section 11 of HB 872, which requires the Department of Environmental Quality (DEQ) to review the capital projects authorized under section 9 for potential inclusion in the state building energy program by providing that the department will notify of approved capital projects. Consistent with section 11, NEW RULE I(5) provides that the department will use any state building

energy conservation program funds to offset or add to the authorized funding for the capital project.

Fiscal Impact

There are no anticipated fiscal impacts associated with NEW RULE I.

5. The department intends for NEW RULE I to be applied retroactively to July 1, 2024.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., August 23, 2024.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above.

9. An electronic copy of this notice is available on the department's web site at https://dphhs.mt.gov/LegalResources/administrativerules, or through the Secretary of State's web site at rules.mt.gov.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by email on July 12, 2024.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Paula M. Stannard
Paula M. Stannard
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State July 16, 2024.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.40.1402 and 37.40.1435 pertaining to HCBS adult residential care services	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 16, 2024, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/81555134342?pwd=dnFIMUttRlB6cGpTNktCMFRpNEFzUT09, meeting ID: 815 5513 4342, and password: 316296; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 815 5513 4342, and password: 316296. Find your local number: https://mt-gov.zoom.us/u/kewP3SViiv.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on August 2, 2024, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

37.40.1402 HOME AND COMMUNITY-BASED SERVICES FOR ELDERLY AND PHYSICALLY DISABLED PERSON: DEFINITIONS (1) "Adult residential care" means a residential habilitation option for consumers residing in an adult foster home, group home ~~a residential hospice~~, or ~~an~~ assisted living facility.

(2) through (24) remain the same.

AUTH: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-402, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-402, MCA

37.40.1435 HOME AND COMMUNITY-BASED SERVICES FOR ELDERLY AND PHYSICALLY DISABLED PERSONS: ADULT RESIDENTIAL CARE, REQUIREMENTS ~~(1) Adult residential care is a residential habilitation option for~~

~~consumers residing in an adult foster home, a residential hospice, or an assisted living facility.~~

(1) Adult residential care services consist of the following categories: level 1 services, level 2 services, level 3 services, and group home services.

(2) Level 1 services are available in licensed adult foster care homes and licensed assisted living categories A, B, and C.

(3) Level 2 services are available in assisted living categories A, B, and C. Level 2 services consist of behavior management support services and include an enhanced rate to reimburse facilities for added supports for members who have disruptive behaviors associated with a medical diagnosis that occur four or more times per week.

(a) The following requirements apply to level 2 services:

(i) the services must be pre-authorized by the department;

(ii) the member must have received level 1 services for at least the past 30 days;

(iii) the facility must submit to the department a member-focused summary outlining the proposed plan of care to which the services will be applied;

(iv) the facility must provide documentation of past attempts to remedy the member's disruptive behavior that includes, at a minimum, the member's assisted living service plan, progress notes, charting, and any other applicable/relevant medical records;

(v) the facility must make available or directly provide a minimum of eight hours of training to staff who interact with members that is specific to the condition(s) of the member(s) for which level 2 services are being requested or are authorized; and

(vi) To support assisted living facility staff who interact with members who exhibit adverse behaviors, the facility must also make available or directly provide to these staff members a minimum of 16 hours of in-service training, annually, in the areas of traumatic brain injury, spectrum disorders, substance abuse, dementia/Alzheimer's, and other conditions which may be associated with behavioral issues. Trainings must be documented, and training records must be available for inspection by the department upon request.

(b) Level 2 services may be approved on a temporary or long-term basis depending on the individual member's circumstances and/or actual outcomes.

(c) Assisted living facilities providing specialized adult residential services and group homes are not eligible for the level 2 enhanced rate as reimbursement for behavioral support services is covered under the level 3 and group home rates.

(4) Level 3 services are specialized adult residential care services provided in licensed assisted living categories A, B, and C facilities that specialize in the care of individuals with brain injuries or other severe physical disabilities.

(5) Group home adult residential care services are provided in licensed community homes for persons with physical disabilities.

(6) Adult residential care services provided in a category B or C assisted living facility must be pre-authorized by the department.

(7) Adult residential care services must be provided using a person-centered planning process in accordance with 42 CFR 441.725, as amended May 10, 2024, which the department adopts and incorporates by reference. A copy of this federal

regulation may be obtained from the Department of Public Health and Human Services, Senior and Long Term Care Division, 1100 N. Last Chance Gulch, P.O. Box 4210, Helena, MT 59604-4210 or by visiting https://www.ecfr.gov/.

~~(2)~~(8) Adult residential care is a bundled service that ~~may~~ includes:

(a) through (d) remain the same.

(e) medication ~~oversight~~ monitoring and management; and

(f) assistance in arranging ~~transportation~~ for medical ~~care~~ and non-medical transportation.

~~(3)~~(9) Adult residential care must provide for 24-hour on-site response staff to meet members' scheduled ~~or unpredictable~~ and unscheduled needs ~~of consumers and to provide supervision of consumers for safety and security~~.

~~(4)~~(10) A ~~consumer~~ recipient of adult residential care may not receive the following services through the program:

(a) through (e) remain the same.

(5) and (6) remain the same but are renumbered (11) and (12).

~~(7) An assisted living facility providing adult residential services must have the following features:~~

~~(a) Provide a home-like environment in either:~~

~~(i) an apartment style living unit with a bedroom, easy access to a bath, and cooking areas; or~~

~~(ii) a home style living unit with a bedroom, easy access to a bath, and reasonable access to food and beverages, unless against medical advice.~~

~~(b) Small dining areas or ability to eat with a private party.~~

~~(c) Residents must have control of lockable access to living unit and egress from the facility (unless Category C). The facility may have a master key for emergencies.~~

~~(d) Residents must have the ability to furnish and decorate living unit.~~

~~(e) Access to private areas for telephone and visitors.~~

~~(f) Provide reasonable assistance coordinating and arranging for the resident's choice of community pursuits outside the residence. This is in addition to the regular outings provided by the facility.~~

~~(g) Residents must have reasonable access to unscheduled activities and resources in the community.~~

~~(h) Policies and practices allow resident risk, through family and resident education, risk assessment, and negotiated risk agreement.~~

~~(i) Aging in place must be a common practice of the assisted living facility, within scope of license.~~

~~(j) The facility should make concerted efforts to allow consumers to remain in the facility when changing from private pay to waiver funding.~~

~~(k) Education and documentation of the facility policies around room changes needs to have been given and explained to the consumer prior to admission and reviewed as financial status changes.~~

~~(8) Providing waiver funding for adult residential services in assisted living facilities that do not meet the above criteria is not allowed.~~

~~(9) Effective September 1, 2011, Medicaid funding will no longer be available for newly admitted home and community services consumers in an assisted living facility, unless the facility meets the above criteria.~~

(13) Provider owned or leased settings where Home and Community-Based services are furnished must be compliant with the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq.

(14) The department may authorize retainer payments, billed at the facility provider rate when the member is absent from an adult residential care facility due to hospitalization, admission to a nursing facility, or vacation (absence from services), for a period not exceeding 30 days per service plan year subject to the following conditions:

(a) The facility may not bill Medicaid for services on days the member is absent from the facility unless retainer-day payments have been pre-authorized by the resident's case management team.

(b) The facility may bill for the date of admission to and discharge from a hospital or nursing facility.

(c) If the member is transferring from one residential care setting to another, the discharging facility may not bill for the day of transfer.

(d) Retainer payments may not be used while a member resides in the Montana State Hospital.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA
IMP: 53-6-402, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) proposes to amend ARM 37.40.1402 and 37.40.1435 pertaining to adult residential care services. The department is proposing to amend ARM 37.40.1402 to remove residential hospice as an adult residential care service and to add group homes as an adult residential care service. This proposed rule change is necessary to remove outdated rule language and reflect current practice under which residential hospice is reimbursed through a separate fee schedule in accordance with ARM 37.40.830.

The department is also proposing to amend ARM 37.40.1435 to clarify the different categories of residential care services, requirements for these services, and to reflect the addition of level 2 services that were approved by the Centers for Medicare & Medicaid Services in the 1915(c) April 2022 Big Sky Waiver renewal. The level 2 service rate is currently established in the Big Sky Waiver Fee Schedule.

The department is proposing the addition of minimum staff training requirements that must be fulfilled for a facility to be eligible for reimbursement at the level 2 service rate. These minimum staff training requirements are intended to ensure that assisted living facilities make available or directly provide training to staff on how to appropriately interact and support individuals who have diagnoses associated with disruptive behaviors. Appropriate staff reaction to an individual who is exhibiting adverse behaviors due to a medical condition can deescalate situations affecting the safety of the member, other residents, and facility staff.

Level 2 residential care services are intended to provide support for members currently living in an assisted living facility who are exhibiting adverse behaviors and whose placement is determined to be at-risk due to those identified behaviors. The proposed rule changes set forth the criteria that must be met by assisted living facilities seeking level 2 service approval. Also included in these proposed rule changes is the addition of language allowing for retainer payments when a member is absent from an adult residential care facility due to hospitalization, entry to a nursing facility, or vacation (absence from services) for a period of up to 30 days per service plan year.

Fiscal Impact

An estimated 104 members may qualify for level 2 services. Eligibility for level 2 services includes the requirement for a member to have first received adult residential care level 1 services for at least 30 days. Level 1 services are currently reimbursed at the rate of $118.50 per day, while level 2 services are currently reimbursed at the rate of $146.64 per day, a difference of $28.14 per day. This equates to an additional $844 per month, or $10,130 per year, for each member who qualifies for level 2 services.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., August 23, 2024.

6. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above.

8. An electronic copy of this notice is available on the department's web site at https://dphhs.mt.gov/LegalResources/administrativerules, or through the Secretary of State's web site at rules.mt.gov.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

11. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Robert Lishman
Robert Lishman
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State July 16, 2024.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.85.207 and 37.86.1201 pertaining to Licensed Direct-Entry Midwife	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 15, 2024, at 3:00 p.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/83462138495?pwd=kZOagEBYrcydzdVs1cL8DwtIT120Dl.1, meeting ID: 834 6213 8495, and password: 876968; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 834 6213 8495, and password: 876968. Find your local number: https://mt-gov.zoom.us/u/kdAkzTESZd.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on August 1, 2024, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

37.85.207 SERVICES NOT PROVIDED BY THE MEDICAID PROGRAM

(1) through (2)(k) remain the same.

(l) delivery services not provided in a licensed health care facility or nationally accredited birthing center ~~unless as an emergency service~~, except as set forth below in (i) and (ii) of this subsection. Delivery services means services necessary to protect the health and safety of the woman and fetus from the onset of labor through delivery. ~~Emergency service is defined in ARM 37.82.102~~ The following circumstances are an exception to the exclusion set forth in this subsection:

(i) delivery services occurring as an emergency service, as defined in ARM 37.82.102; and

(ii) a planned home birth attended by a licensed nurse midwife or licensed direct-entry midwife, provided the circumstances of the delivery comply with the standards and requirements in ARM 24.111.617 and ARM 24.159.1477;

(m) through (3) remain the same.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA
IMP: 53-2-201, 53-6-101, 53-6-103, 53-6-116, 53-6-131, 53-6-141, 53-6-402, MCA

37.86.1201 LICENSED DIRECT-ENTRY MIDWIFE (1) remains the same.

(2) Direct-entry midwives may ~~only~~ provide prenatal labor and delivery or postpartum care in a member's home or in a birthing center as defined at ARM 37.86.3001. A home birth must comply with the standards and requirements in ARM 24.111.617 and ARM 24.159.1477.

(3) through (5) remain the same.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-6-101, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.85.207 pertaining to services not covered by the Medicaid program and ARM 37.86.1201 pertaining to Licensed Direct-Entry Midwife.

The reasonable necessity for proposing these rule changes is to comply with HB 655, passed by the 2023 Montana Legislature, which provides for Medicaid coverage of planned home births attended by licensed nurse midwives or licensed direct-entry midwives. The home births must comply with standards established by the Department of Labor and Industry in ARM 24.111.617 and ARM 24.159.1477, which set forth the circumstances that constitute a low risk of adverse birth outcomes for planned home births attended by a nurse-midwife or a direct-entry midwife.

ARM 37.85.207(2)(l)
The department proposes adding language to carve out an exception to the list of medical services excluded from Medicaid coverage. The amended language would provide for Medicaid coverage of planned delivery services by a licensed nurse midwife or a licensed direct-entry midwife in a Medicaid member's home if the circumstances of the birth comply with standards established by the Department of Labor and Industry in ARM 24.111.617 and ARM 24.159.1477. The department proposes the amendments to comply with HB 655, passed by the 2023 Montana Legislature.

ARM 37.86.1201(2)
The department proposes amending language to permit licensed direct-entry midwives to provide prenatal labor and delivery or postpartum care in a member's home in addition to a birthing center as defined at ARM 37.86.3001. The home birth must comply with standards established by the Department of Labor and Industry in ARM 24.111.617 and ARM 24.159.1477. The department proposes the amendments to comply with HB 655, passed by the 2023 Montana Legislature.

Fiscal Impact

The following table displays the anticipated financial impact during SFY 2024 through 2028.

FUNDING	SFY 2024	SFY2025	SFY2026	SFY2027	SFY2028
State - Medicaid	$7,164	$7,979	$8,413	$9,392	$10,453
Federal - Medicaid	$12,686	$14,259	$15,034	$16,785	$18,681
State - Expansion	$983	$1,101	$1,161	$1,296	$1,442
Federal - Expansion	$8,843	$9,907	$10,445	$11,662	$12,979

5. The department intends for these rule amendments to be effective retroactively to July 1, 2023.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., August 23, 2024.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above.

9. An electronic copy of this notice is available on the department's web site at https://dphhs.mt.gov/LegalResources/administrativerules, or through the Secretary of State's web site at rules.mt.gov.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by telephone on June 24, 2024.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

12. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Brenda K. Elias
Brenda K. Elias
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State July 16, 2024.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.36.604 pertaining to MTAP Financial Eligibility Criteria	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 19, 2024, at 2:00 p.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rule. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/81862257200?pwd=ZEFydlZuaFNQOWFwVDNMakFoUnA3dz09, meeting ID: 818 6225 7200, and password: 190640; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 818 6225 7200, and password: 190640. Find your local number: https://mt-gov.zoom.us/u/kekQKkIZCN.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on August 5, 2024, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

37.36.604 FINANCIAL ELIGIBILITY CRITERIA (1) Individuals whose annual family income during the 12 months immediately preceding the month of application is less than 250% of the ~~2022~~ 2023 poverty guidelines published by the U.S. Department of Health and Human Services (HHS) are eligible for a loan of specialized telecommunications equipment based on income. 250% of the HHS ~~2022~~ 2023 annual poverty guidelines for families of various sizes is specified on the Montana ~~Telecommunications Access~~ Accessible Communications program website, effective on January 12, ~~2022~~ 2023, which rate is adopted and incorporated here by reference. A copy is available at https://dphhs.mt.gov/detd/mtap/nocostassistiveequipment, or may be obtained from the Department of Public Health and Human Services, Montana ~~Telecommunications Access Program~~ Accessible Communications (~~MTAP~~ MTAC), P.O. Box 4210, Helena, MT 59604-4210.

(2) remains the same.

AUTH: 53-19-305, 53-19-307, MCA
IMP: 53-19-305, 53-19-307, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing an amendment to ARM 37.36.604 to align the requirements for the Montana Accessible Communications (MTAC) program with the 2023 United States Department of Health and Human Services Federal Poverty Level (FPL) index guidelines.

The following describes the purpose and necessity of the proposed rule amendment pertaining to this rule:

ARM 37.36.604
The department is proposing to amend ARM 37.36.604, pertaining to MTAC financial eligibility criteria. This rule sets forth the criteria that allow the department to pay for services being made available to persons who are eligible for MTAC. The rule provides that the payment for services by the department may occur if the consumer's income and financial resources do not exceed maximum levels for income and resources established through the rule.

This rule amendment revises the maximum level of allowable income. Currently the rule provides that the maximum level is 250% of the 2022 United States Department of Health and Human Services poverty guidelines for households. This amendment would update the rule to coincide with 250% of the 2023 FPL.

The rule amendment would revise this level by replacing the year 2022 to indicate that the maximum level for income is 250% of the 2023 United States Department of Health and Human Services poverty guidelines for households, as detailed on the MTAC website, or by contacting MTAC. The updated, detailed income calculations by family size would be posted on the MTAC website, the likeliest place members of the public applying for assistance would look for this information. During the public comment period the proposed rates would be placed on the MTAC website as "proposed," until approved and adopted.

The department proposes changing the name of the program from the Montana Telecommunications Access Program (MTAP) to Montana Accessible Communications (MTAC). This change would simplify the program name, making it more recognizable and meaningful to potential clients, friends and family of potential clients, and the general public, who might be searching for accessible communications options. The department is also proposing to make this change in Notice No. 37-1085, which would amend ARM 37.36.101, 37.36.402, and 37.36.604, to reflect the proposed change from MTAP to MTAC. The department believes it is important to have the same, updated program name across all administrative rules that apply to this program.

Fiscal Impact

There would be no fiscal impact due to the increase in the FPL. A minimal number of clients who are served by the MTAC exceed the FPL. The majority are well under the FPL. An increase in the FPL would be very minimal and most likely not yield any additional costs to the MTAC program.

5. The department proposes these rule amendments to be retroactively effective to January 12, 2023.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., August 23, 2024.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Written requests may be mailed or delivered to the contact person in 6 above.

9. An electronic copy of this notice is available on the department's web site at https://dphhs.mt.gov/LegalResources/administrativerules, or through the Secretary of State's web site at rules.mt.gov.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Heidi Sanders
Heidi Sanders
Rule Reviewer

/s/ Robert Siedlecki
Robert Siedlecki, Deputy Director
Department of Public Health and Human Services

Certified to the Secretary of State July 16, 2024.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.87.2203 pertaining to children's mental health room and board updates	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 15, 2024, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rule. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/89822328790?pwd=a1ZIRDlEeEZmdzY0Z3E2TThXc1h3dz09, meeting ID: 898 2232 8790, and password: 437774; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 898 2232 8790, and password: 437774. Find your local number: https://mt-gov.zoom.us/u/kc9GdOSKjc.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on August 1, 2024, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

37.87.2203 NON-MEDICAID SERVICES PROGRAM (1) and (2) remain the same.

(3) The department adopts and incorporates by reference the CMHB's Non-Medicaid Services Program Provider Manual, dated ~~October 14, 2017~~ March 1, 2024 (~~the~~ Manual), which sets forth the requirements and limitations of the CMHB's Non-Medicaid Services Program.

(4) remains the same.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA
IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-21-701, 53-21-702, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.87.2203.

The following summary explains programmatic changes and the reasonable necessity for the proposed rule amendment.

The department is proposing updates to the Children's Mental Health Bureau Non-Medicaid Services Provider Manual, effective March 1, 2024. The proposed updates increase access to room and board funding for Montana Medicaid and Healthy Montana Kids (HMK) members with serious emotional disturbance (SED) who require medically necessary therapeutic group home (TGH) or therapeutic foster care (TFC) services. The department proposes to use funds from the Supplemental Services Program (SSP), System of Care Account (SOCA), and the Children's Mental Health Bureau Room and Board Account to pay for room and board. These updates are in response to provider and family outreach regarding the need for additional room and board flexibilities with the Mental Health Block Grant room and board funding ending. The proposed updates will also clarify and simplify processes.

Children's Mental Health Bureau Non-Medicaid Services Provider Manual Updates

The department currently provides limited funding for room and board services for families with youth with SED in need of medically necessary TGH and TFC services. The department is authorized to use Medicaid funding to cover the treatment portion of the stay; however, room and board must be paid for with non-Medicaid funding. In the past federal fiscal year, the department has used Mental Health Block Grant funds for a short period of time to support providers and families with the cost of room and board while a youth is receiving medically necessary treatment in a TGH or TFC placement. Block grant funding is no longer available to pay for room and board. The department proposes to make program updates to increase access to funding from SSP, SOCA, and the Children's Mental Health Bureau Room and Board Account.

The department is proposing the following updates to increase access to room and board funding:

- Currently, room and board services funded through SSP have a four-month maximum. The proposed updates will provide for an equivalent daily maximum of 120 days for youth who begin their treatment mid-month. Currently, a month is counted regardless of what day of the month a youth is placed at a TGH or TFC, which limits the youth's access to the service.
- Currently, the four-month maximum for SSP applies to the entire family. The proposed updates would allow 120 days for each youth in the family requiring medically necessary TGH or TFC treatment.

- Currently, at least one month break in service is required between federal fiscal years for SSP funding. The proposed updates will allow funding to refresh at the start of the fiscal year for youth who require consecutive treatment that spans two federal fiscal years.
- The proposed updates will remove the sliding fee schedule for all room and board funding sources so that all eligible families have access to the same amount of funding.
- The proposed updates will remove a second income verification for families and providers in order to streamline the process.

The updated Children's Mental Health Bureau Non-Medicaid Services Provider Manual also includes general clean up and clarifying language to better describe current processes. The department proposes the effective date of the manual be updated to March 1, 2024, in ARM 37.87.2203. The department is proposing the following updates to the manual:

- Removing previous manual updates from the Introduction.
- Updating the name of the division to "Behavioral Health and Developmental Disabilities (BHDD) Division."
- Updating the definition of "youth" to refer to the definition in ARM 37.87.102.
- In the Eligibility Criteria section of the SOCA chapter, updating the eligibility requirements by referring to the definition of youth, as provided in the previous bullet point, to ensure uniformity and consistency.
- Adding language throughout to include youth who receive HMK/CHIP in addition to youth who receive HMK+/Medicaid to clarify that youth with either coverage are eligible for funding per current processes.
- Updating the link to the Children's Mental Health website.
- Adding "Applications must be submitted to the CMHB within ten (10) days of an approved TGH prior authorization." to Chapter 7 Request for SSP, R&B, and SOCA to reflect the current process.
- Adding language to specify that the link to obtain a blank W-9 is for the IRS website.
- Removing all language referring to income verification because the department is proposing to eliminate that step in the eligibility process.
- General grammar and spelling corrections.

Fiscal Impact

There is no fiscal impact associated with these rule amendments.

5. The department proposes this rule amendment be retroactive to March 1, 2024.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be

submitted to: Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., August 23, 2024.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Written requests may be mailed or delivered to the contact person in 6 above.

9. An electronic copy of this notice is available on the department's web site at https://dphhs.mt.gov/LegalResources/administrativerules, or through the Secretary of State's web site at rules.mt.gov.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

12. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Brenda K. Elias
Brenda K. Elias
Rule Reviewer

/s/ Robert Siedlecki
Robert Siedlecki, Deputy Director
Department of Public Health and Human Services

Certified to the Secretary of State July 16, 2024.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.79.304 pertaining to Healthy Montana Kids Benefits	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 15, 2024, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rule. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/84238723579?pwd=Wkh0TThVYnZoVEFrNWU4TnVqWHJyUT09, meeting ID: 842 3872 3579, and password: 658494; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 842 3872 3579, and password: 658494. Find your local number: https://mt-gov.zoom.us/u/kep9Futyzc.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on August 1, 2024, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

37.79.304 SERVICES COVERED (1) The department adopts and incorporates by reference the HMK Evidence of Coverage dated ~~January 1, 2023~~ January 1, 2024, which is available on the department's web site at www.hmk.mt.gov.

(2) remains the same.

AUTH: 53-4-1009, 53-4-1105, MCA
IMP: 53-4-1005, 53-4-1109, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.79.304, which adopts the Healthy Montana Kids (HMK) Evidence of Coverage (EOC) document describing the Healthy Montana Kids (HMK) benefit

plan. Any changes to the benefit plan require the EOC and the effective date of the rule to be updated in rule.

The proposed changes to the EOC document are as follows:

- Add Fertility Preservation services to benefit plan, a service approved by the 2023 Legislature for qualifying members, setting forth the criteria to qualify for the service. The service covers collection of eggs and sperm for eligible HMK members but does not cover storage costs.
- Add Mobile Crisis services to benefit plan and set forth the medical necessity criteria for the service. The additional language in the manual is necessary to ensure service parameters are spelled out for providers and members and to ensure public funds are used in the most cost-effective way.
- Add Substance Use Disorder (SUD) diagnosis to Community Based Psychiatric Rehabilitation and Support (CBPRS) qualification criteria. This proposed change will align this service with the Medicaid program and ensure uniformity in services.
- Redefine Emergency Medical Condition with acute symptoms to align with Code of Federal Regulation definitions.
- Remove prior authorization requirement for Outpatient Rehabilitation/Habilitation Therapy services to align with Medicaid processes to ensure uniformity in services.
- Remove prior authorization requirement for Extended Behavioral Health Benefits to align with the Medicaid process to ensure uniformity of services.
- Add ABA and ambulance to list of services that need Conduent's first level appeals and removed CBPRS from the list to ensure accuracy for billing of claims.
- Clarify what services Conduent is responsible for administering.
- Update the DPHHS logo for conformity with DPHHS standards.
- Update BCBS P.O. Box to ensure accuracy.
- Make a variety of grammatical corrections to make document clearer to readers.

The department has posted a redlined version of the proposed EOC manual with the changes outlined above at https://dphhs.mt.gov/HMK/.

Fiscal Impact

Adding the Fertility Preservation Services was estimated to have an annual fiscal impact of $8,123 for the HMK/CHIP populations.

5. The department intends these rule amendment changes to be effective retroactively to January 1, 2024.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., August 23, 2024.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above.

9. An electronic copy of this notice is available on the department's web site at https://dphhs.mt.gov/LegalResources/administrativerules, or through the Secretary of State's web site at rules.mt.gov.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

12. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Brenda K. Elias
Brenda K. Elias
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State July 16, 2024.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.8.116 pertaining to Fees for Certification, File Searches, and Other Vital Records Services	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 16, 2024, at 1:00 p.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rule. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/85789496358?pwd=RurXjP7WIr0Tgq6nOfcaQBfrhtwi8A.1, meeting ID: 857 8949 6358, and password: 396358; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 857 8949 6358, and password: 396358. Find your local number: https://mt-gov.zoom.us/u/ko9nABBWj.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on August 2, 2024, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

37.8.116 FEES FOR CERTIFICATION, FILE SEARCHES, AND OTHER VITAL RECORDS SERVICES (1) The fee for a certified copy (photocopy or computer-produced) of a birth certificate, a fetal death certificate, an acknowledgment of paternity, or a delayed birth registration is ~~$12~~ $16.

(2) remains the same.

(3) The fee for an informational copy of a death certificate is ~~$14~~ $16 for each copy.

(4) and (5) remain the same.

(6) The fee to process a finalized adoption or a rescission of an adoption is $25. A certified copy of the new certificate will be provided for a fee of ~~$12~~ $16.

(7) The fee to create a birth certificate pursuant to a court order is $25. A certified copy of the new certificate will be provided for a fee of $16.

(7) remains the same but is renumbered (8).

~~(8)~~(9) The fee for filing a delayed registration of a vital record is $25. A certified copy of the delayed certificate will be provided for a fee of ~~$12~~ $16.

(10) The fee for establishing a birth certificate due to a home birth is $25. A certified copy of the certificate will be provided for a fee of $16.

~~(9)~~(11) The fee for amending or correcting a vital record after one year from the date of filing is ~~$15~~ $25. A certified copy of the amended record will be provided to the person requesting the amendment or correction for a fee of ~~$12~~ $16.

(10) through (14) remain the same but are renumbered (12) through (16).

AUTH: 50-15-102, 50-15-103, 50-15-111, MCA
IMP: 42-2-218, 50-15-111, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.8.116 to revise fees charged for copies of certain vital records and other types of services provided by the Office of Vital Records (OVR). The fees provided for under this rule were last revised approximately three years ago. Some of the activities performed by OVR involve substantial amounts of staff time, and the fees currently in effect do not cover the actual cost of these activities. The proposed fee increases will shift a greater proportion of the actual cost of the services to the individuals who directly use them.

The current fee for a certified copy of a birth certificate, fetal death certificate, acknowledgement of paternity, or delayed birth registration is $12. The department is proposing to increase this fee to $16 per certified copy.

The current fee for an informational copy of a death certificate is $14. The department is proposing to increase this fee to $16 per informational copy.

The current fee for amending or correcting a vital record after one year from the date of filing is $15. The department is proposing to increase this fee to $25.

There is currently no fee for the creation of a birth certificate arising from a home birth. The majority of the work to gather data to establish a birth certificate following a home birth is performed by OVR rather than hospital staff, birthing centers, or midwives. This collection of data by OVR takes time and requires continued correspondence with the applicant to work to establish the birth certificate. To account for this time, the department is proposing to establish a fee of $25 for creation of a birth certificate in cases of a home birth.

There is currently no fee for the creation of a birth certificate arising from a court order. Court orders directing the creation of a birth certificate must be reviewed by OVR on an individualized basis to determine what OVR is required to do to implement the order, whether any additional documentation is needed for implementation, and to ensure the order is associated with the correct record at

issue. To account for this time, the department is proposing to establish a fee of $25 to create a birth certificate arising from a court order.

Fiscal Impact

OVR issues approximately 7,500 certified copies of birth certificates per year, including delayed birth certificates. OVR issues approximately 55 certified copies of acknowledgments of paternity per year. OVR rarely issues certified copies of fetal death certificates and received no requests for issuance of such copies within the past year. The proposed fee increase is $4 per certified copy, which equates to $30,220 of additional estimated revenue per year.

OVR processes approximately 3,427 corrections and amendments to vital records each year to which the amendment and correction fee applies. The proposed fee increase is $10 per vital record amended or corrected, which equates to $34,750 of additional estimated revenue per year.

OVR establishes approximately 60 birth certificates per year arising from home births. The proposed fee of $25 equates to $1,500 of additional estimated revenue per year.

OVR establishes approximately 75 birth certificates per year arising from court orders. The proposed fee of $25 equates to $1,875 of additional estimated revenue per year.

The total estimated additional revenue per year is $67,545. The total estimated number of persons affected annually is 11,117.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., August 23, 2024.

6. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above.

8. An electronic copy of this notice is available on the department's web site at https://dphhs.mt.gov/LegalResources/administrativerules, or through the Secretary of State's web site at rules.mt.gov.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Robert Lishman
Robert Lishman
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State July 16, 2024.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.36.101, 37.36.402, and 37.36.604 pertaining to the Montana Telecommunications Access Program	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 19, 2024, at 1:00 p.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/89779189052?pwd=ZFhqRTRENzNuTXpoTGJMcGswYm5XUT09, meeting ID: 897 7918 9052, and password: 553230; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 897 7918 9052, and password: 553230. Find your local number: https://mt-gov.zoom.us/u/kdbTLXd1bp.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on August 5, 2024, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

37.36.101 DEFINITIONS For purposes of this chapter, the following definitions apply:

(1) through (4) remain the same.

(5) "Director" means the person employed by the Committee on Telecommunications Services to administer the Montana ~~Telecommunications Access~~ Accessible Communications ~~Program~~ (~~MTAP~~ MTAC) program.

(6) through (10) remain the same.

(11) "~~MTAP~~ MTAC" means ~~the~~ Montana ~~Telecommunications Access Program~~ Accessible Communications.

(12) through (13) remain the same.

(14) "Program" means ~~the~~ Montana ~~Telecommunications Access~~ Accessible Communications ~~Program~~.

(15) through (19) remain the same.

AUTH: 53-19-305, 53-19-307, MCA
IMP: 53-19-305, 53-19-307, MCA

37.36.402 OWNERSHIP (1) All equipment loaned through ~~MTAP~~ MTAC will remain the property of the state of Montana. All equipment will be recorded and tracked for a minimum of five years by serial number, state of Montana identification tag and name, address, and telephone number of recipient.

AUTH: 53-19-307, MCA
IMP: 53-19-307, MCA

37.36.604 FINANCIAL ELIGIBILITY CRITERIA (1) Individuals whose annual family income during the 12 months immediately preceding the month of application is less than 250% of the 2022 poverty guidelines published by the U.S. Department of Health and Human Services (HHS) are eligible for a loan of specialized telecommunications equipment based on income. 250% of the HHS 2022 annual poverty guidelines for families of various sizes is specified on the Montana ~~Telecommunications Access Program~~ Accessible Communications website, effective on January 12, 2022, which rate is adopted and incorporated here by reference. A copy is available at https://dphhs.mt.gov/detd/mtap/nocostassistiveequipment, or may be obtained from the Department of Public Health and Human Services, Montana ~~Telecommunications Access Program~~ Accessible Communications (~~MTAP~~ MTAC), P.O. Box 4210, Helena, MT 59604-4210.

(2) remains the same.

AUTH: 53-19-305, 53-19-307, MCA
IMP: 53-19-305, 53-19-307, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing the amendment of ARM 37.36.101, 37.36.402, and 37.36.604 to update the program name from Montana Telecommunications Access Program (MTAP) to Montana Accessible Communications (MTAC), to simplify and better reflect the purpose of the program.

The following describes the purpose and necessity of the proposed rule amendments pertaining to these rules:

ARM 37.36.101, 37.36.402, and 37.36.604

The department is proposing to amend ARM 37.36.101, 37.36.402, and 37.36.604, pertaining to MTAP's name. These rules reference the name, Montana Telecommunications Access Program (MTAP), and need to be updated to reflect the proposed new name, Montana Accessible Communications (MTAC).

The rule amendment would revise the name of the program by replacing the name, Montana Telecommunications Access Program (MTAP) throughout the rules with the proposed new name, Montana Accessible Communications (MTAC). The current name, Montana Telecommunications Access Program (MTAP), is cumbersome and confusing to the general public. The purpose of this change is to simplify the program name, making it more recognizable and meaningful to potential clients, friends and family of potential clients, and the general public, who might be searching for accessible communications options.

Fiscal Impact

There would be no fiscal impact due to the change in the program name, other than the cost of updating the program logo on all program related materials. It is anticipated that this could be done with minimal cost and over time.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., August 23, 2024.

6. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Written requests may be mailed or delivered to the contact person in 5 above.

8. An electronic copy of this notice is available on the department's web site at https://dphhs.mt.gov/LegalResources/administrativerules, or through the Secretary of State's web site at http://sos.mt.gov/ARM/register.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Heidi Sanders
Heidi Sanders
Rule Reviewer

/s/ Robert Siedlecki
Robert Siedlecki, Deputy Director
Department of Public Health and Human Services

Certified to the Secretary of State July 16, 2024.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULE I and the amendment of ARM 37.82.701 and 37.86.1701 pertaining to Plan First provider billing	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On August 16, 2024, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed adoption and amendment of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/81934255032?pwd=SmxXa0FPQkYvaUVra2dwN2FtTVQ2Zz09, meeting ID: 819 3425 5032, and password: 435057; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 819 3425 5032, and password: 435057. Find your local number: https://mt-gov.zoom.us/u/kezIAPwDVF.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on August 2, 2024, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov.

3. The rule proposed to be adopted provides as follows:

NEW RULE I 1115 PLAN FIRST WAIVER (1) "Plan First" refers to Montana's Social Security Act Section 1115 Waiver titled Plan First. This waiver is approved by the Centers for Medicare & Medicaid Services and managed by the Department of Public Health and Human Services (DPHHS) with eligibility determined by the Office of Public Assistance (OPA).

(2) A woman may receive coverage through Plan First if they are not eligible for other Medicaid benefits and:

(a) is a Montana resident;

(b) is aged 19 through 44 years;

(c) is able to become pregnant but is not currently pregnant; and

(d) has a household income up to 211% of the federal poverty level (FPL).

(3) Except as otherwise provided in this rule, the limited Plan First benefits are available to all persons who are members of Plan First under this chapter.

(4) Services covered under Plan First are limited to family planning and family planning-related services.

(5) Plan First is a Medicaid program, and as a condition of participation in Montana Medicaid, all providers must comply with provider participation rules set forth in ARM 37.85.401 and the billing, reimbursement, claims processing, and payment provisions set forth in ARM 37.85.406.

(6) The procedure billing codes specific to Plan First are available at the Medicaid provider website located at https://medicaidprovider.mt.gov/planfirst.

(7) The Medicaid Program will not reimburse providers for services rendered to Plan First members for billing codes not listed on the website referred to in (6).

(8) Providers are responsible for confirming Medicaid eligibility and for identifying Plan First members to ensure the provider seeks Medicaid reimbursement for only those services that are covered by Plan First.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, MCA

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

37.82.701 GROUPS COVERED, NONINSTITUTIONALIZED FAMILIES AND CHILDREN (1) through (1)(n) remain the same.

(o) Women ages 19 through 44, who have not been otherwise determined eligible for Medicaid under this title, who are able to become pregnant but are not now pregnant, whose household income does not exceed 211% of the federal poverty level. Services are limited to those family planning services defined at ~~ARM 37.86.1701~~ [NEW RULE I] and not covered by third party health coverage. This program is limited to 4,000 women at any given time and is known as Plan First. Plan First will not pay any copay or deductible required by a member's third party health coverage.

(2) and (3) remain the same.

AUTH:53-4-212, 53-4-1105, 53-6-113, MCA
IMP: 53-4-231, 53-4-1104, 53-4-1105, 53-6-101, 53-6-131, 53-6-134, MCA

37.86.1701 FAMILY PLANNING SERVICES (1) remains the same.

(2) A copy of the family planning procedures ~~and service code table for Plan First~~ may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(3) and (4) remain the same.

(5) Plan First waiver services, which are separate and distinct from family planning services covered by Medicaid, are set forth in [NEW RULE I].

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-6-101, ~~53-6-141,~~ MCA

5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to adopt NEW RULE I and amend ARM 37.82.701 and 37.86.1701.

Plan First is an 1115 Waiver that provides limited benefits for family planning services to eligible women. The reasonable necessity for the rule proposal is to clearly distinguish Plan First waiver services from the Medicaid program to ensure that providers and Plan First members understand the limited services that are covered by the waiver program. The Plan First waiver is limited to family planning services and procedures that are set forth in the list of procedure codes at https://medicaidprovider.mt.gov/planfirst. There are currently no rules that provide specific information or guidance to providers and members about the limited services.

A provider who serves Plan First members is responsible for identifying Plan First members to ensure the provider seeks reimbursement for only those services and procedures that are covered by Plan First. Providers may not bill Plan First members for services not covered by Plan First, unless the provider has followed the requirements set forth in ARM 37.85.406.

NEW RULE I

The proposed new rule includes information regarding eligibility, benefits, and provider billing as none of this currently exist in the rules for the 1115 Plan First waiver. The proposed new rule sets forth current criteria and covered services, as approved by CMS, and does not propose any change in the Plan First Waiver program.

ARM 37.82.701

This rule sets forth the Medicaid eligibility criteria for non-institutionalized families and children. The department proposes to refer to NEW RULE I in the section that explains eligibility criteria for Plan First. The reference to NEW RULE I will replace a reference to ARM 37.86.1701, which did not provide a clear explanation of Plan First services. Referring to NEW RULE I will provide accurate information to providers, Plan First members, and the general public.

ARM 37.86.1701

This rule currently defines the family planning services for standard Medicaid. The department proposes to remove the reference to Plan First in (2) and add new (5), which provides a reference to NEW RULE I. These changes clearly distinguish between family planning services covered by standard Medicaid and the services covered by Plan First. The department proposes to delete the reference to 53-6-141, MCA, as an implementing statute because the statute has been repealed.

Fiscal Impact

This proposed rulemaking would adopt into rule the current practices of the Medicaid Plan First Program under the CMS-approved Section 1115 Waiver. Accordingly, this proposed rule would have an administrative cost of $0.00 in state fiscal year (SFY) 2024 and $0.00 in SFY2025. Likewise, the proposed changes would result in a projected cost savings of $0.00.

There are an estimated 1,642 Plan First members. However, because the proposed rule would merely codify current practice under the Section 1115 Waiver, Plan First members should not experience any changes in benefits or services as a result of this proposed rule.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., August 23, 2024.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above.

9. An electronic copy of this notice is available on the department's web site at https://dphhs.mt.gov/LegalResources/administrativerules, or through the Secretary of State's web site at rules.mt.gov.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rule will not significantly and directly impact small businesses.

12. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Brenda K. Elias
Brenda K. Elias
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State July 16, 2024.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.34.912 pertaining to Medicaid HCBS Provider requirements	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 15, 2024, at 9:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rule. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/88929732209?pwd=RkNmWUVhc1QvblA3T0pxN0h5RHhUUT09, meeting ID: 889 2973 2209, and password: 000268; or

(b) Dial by telephone: +1 https://mt-gov.zoom.us/u/koy6uDHGf, meeting ID: 889 2973 2209, and password: 000268. Find your local number: https://mt-gov.zoom.us/u/koy6uDHGf.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on August 1, 2024, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

37.34.912 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: PROVIDER REQUIREMENTS ~~(1) The criteria for a qualified provider to be authorized to deliver a service available through the 0208 HCBS Waiver Program are specified in the Provider Specifications for Services Matrix for the 0208 HCBS Waiver Program.~~

~~(2)~~(1) The Developmental Disabilities Program 0208 Comprehensive Waiver Provider ~~Specifications for Services Matrix~~ Manual ~~for the 0208 HCBS Waiver Program~~, dated ~~December 27, 2013~~ July 1, 2024, sets forth the qualifications and standards that govern ~~provider requirements in the provision of 0208 HCBS waiver services~~ the qualified provider and service delivery processes.

~~(3)~~(a) The department adopts and incorporates by reference the Developmental Disabilities Program 0208 Comprehensive Waiver Provider

~~Specifications for Services Matrix~~ Manual ~~for the 0208 HCBS Waiver Program~~, dated ~~December 27, 2013~~ July 1, 2024.

~~(4)~~(b) A copy of the ~~matrix~~ Developmental Disabilities Program 0208 Comprehensive Waiver Provider Manual may be obtained through the Department of Public Health and Human Services, Developmental Disabilities Program, 111 N. Sanders, PO Box 4210, Helena, MT 59604-4210 ~~or at http://www.dphhs.mt.gov/dsd/ddp/medicaidwaivers.shtml~~.

~~(5) A provider must document the completion of training in the personnel file of the staff or in the provider's staff training file including:~~

~~(a) the date of the training;~~

~~(b) name and title of trainer;~~

~~(c) name and signature of person receiving the training;~~

~~(d) type of training;~~

~~(e) the agenda of the training; and~~

~~(f) hours of training.~~

~~(6) Any facility providing services must meet all applicable licensing requirements and fire and safety standards.~~

~~(7) A person directly providing services must be mentally and physically capable of assisting a person receiving services as required by the program.~~

AUTH: 53-6-113, 53-6-402, MCA
IMP: 53-6-101, 53-6-402, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.34.912 to adopt and incorporate into rule the Developmental Disabilities Program 0208 Comprehensive Waiver Provider Manual, effective July 1, 2024.

The purpose of this manual is to guide Developmental Disabilities Program (DDP) 0208 Comprehensive Waiver providers through the qualified provider and service delivery processes and includes information on the following subjects:

1. Purpose of the 0208 Waiver program
2. Administration of the 0208 Waiver program
3. Provider types under the 0208 Waiver program (including a training matrix which lists staff training requirements)
4. Procedures for the 0208 Waiver program
5. Grant funds for 0208 Waiver providers

This amendment is necessary because DDP is transitioning to the Medicaid provider enrollment process and eliminating the need for provider contracts.

Fiscal Impact

The proposed rule amendment has no anticipated fiscal impact implications.

5. The department intends for this rule amendment to be applied retroactively to July 1, 2024.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., August 23, 2024.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above.

9. An electronic copy of this notice is available on the department's web site at https://dphhs.mt.gov/LegalResources/administrativerules, or through the Secretary of State's web site at rules.mt.gov.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

12. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Brenda K. Elias
Brenda K. Elias
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State July 16, 2024.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.106.301, 37.106.310, and 37.106.330 pertaining to Health Care Facility Standards	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 19, 2024, at 9:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/85086633914?pwd=OkDOEabnO0VcRkR4tdNybG5kXPFsIP.1, meeting ID: 850 8663 3914, and password: 338277; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 850 8663 3914, and password: 338277. Find your local number: https://mt-gov.zoom.us/u/kbP4IBlh4L.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on August 5, 2024, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov.

3. The rules proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

37.106.301 DEFINITIONS (1) The following definitions apply in this subchapter:

(1) through (7) remain the same but are renumbered (a) through (g).

(2) For purposes of ARM 37.106.310 and 37.106.330, the following terms shall have the meaning assigned to them in 50-4-1101, MCA:

(a) "Conscience";

(b) "Discriminate" or "Discrimination";

(c) "Health care service";

(d) "Medical practitioner";

(e) "Participate in a health care service";

AUTH: 50-5-103, MCA

IMP: 50-4-1101, 50-5-101, 50-5-103, 50-5-104, 50-5-105, 50-5-106, 50-5-107, 50-5-108, 50-5-201, 50-5-202, 50-5-203, 50-5-204, 50-5-207, 50-5-208, 50-5-210, 50-5-211, 50-5-212, 50-5-225, 50-5-226, 50-5-227, 50-5-228, MCA

37.106.310 LICENSING: PROCEDURE FOR OBTAINING A LICENSE: ISSUANCE AND RENEWAL OF A LICENSE (1) through (4) remain the same.

(5) The department will not:

(a) require a health care facility to participate in a health care service that violates that facility's conscience;

(b) require that the facilities of a health care facility be made available for uses or purposes, including abortion, contrary to the facility's conscience, religious beliefs, or moral tenets or that of its staff or governing body;

(c) discriminate or take an action that constitutes discrimination (including an adverse licensure or other action) against a health care facility as a result of that facility's exercise of conscience;

(d) deny any health care facility any privileges or immunities, or deny it any public benefits as a result of its exercise of conscience; and/or

(e) discriminate against a health care facility that exercises whistleblower rights with respect to suspected violations of conscience rights or that testifies, assists ,or participates, or intends to testify, assist, or participate, in a proceeding.

(6) For purposes of (5), a health care facility may establish a claim of conscience by reference to its governing documents as identified in 50-4-1101, MCA.

AUTH: 50-5-103, MCA
IMP: 50-4-1102, 50-4-1104, 50-5-103, 50-5-202, 50-5-203, 50-5-204, 50-20-111, MCA

37.106.330 MINIMUM STANDARDS FOR ALL HEALTH CARE FACILITIES: WRITTEN POLICY AND PROCEDURE (1) A current written policy and procedure manual that describes all services provided in the health care facility must be developed, implemented, and maintained at the facility. The manual must be available to staff, residents, resident family members, resident legal representatives, and the department and must be complied with by all facility personnel and its agents. Policies and procedures must be reviewed at least ~~annually~~ every other year by either the administrator or the medical director with written documentation of the review.

(2) All health care facilities must develop policies and procedures that, consistent with 50-4-1103, 50-4-1105, and 50-20-111, MCA, require the facility to not discriminate against medical practitioners who exercise their conscience, or First Amendment free speech rights, or take certain whistleblower actions. These policies and procedures must include:

(a) a medical practitioner's right not to participate in health care services that violate the medical practitioner's conscience;

(b) how a medical practitioner can exercise the right to conscience;

(c) that the health care facility will not consider a medical practitioner's refusal to participate in a health care service on the basis of conscience with respect to staff

privileges, as a basis for discrimination, other adverse action, and will not discriminate against a medical practitioner for exercise of conscience;

(d) that the health care facility will not discriminate against a medical practitioner who exercises whistleblower rights with respect to suspected violations of conscience rights or who testifies, assists ,or participates, or intends to testify, assist, or participate, in a proceeding;

(e) maintenance and management of information on the exercise of conscience as confidential information, disclosed only on a need to know basis; and

(f) training of all staff on the foregoing.

(3) All hospitals, critical access hospitals, rural emergency hospitals, abortion clinics, outpatient centers for primary care, and outpatient centers for surgical services must develop a policy that if the facility performs abortions, they do not require medical practitioners to participate in such procedures unless such practitioners have affirmatively opted in to participate in such services in writing.

AUTH: 50-5-103, MCA
IMP: 50-4-1103, 50-4-1105, 50-5-103, 50-20-111, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.106.301, 37.106.310, and 37.106.330.

The 2023 Legislature enacted House Bill No. 303: Implement Medical Ethics and Diversity Act. The bill was signed by the Governor on May 3, 2023. The department proposes to amend ARM 37.106.301, 37.106.310, and 37.106.330, in order to implement HB 303. The department believes that amendment of these rules is necessary to provide that the department will not discriminate against or otherwise take adverse action against health care facilities that exercise conscience rights. The department also proposes to require health care facilities develop policies that require the facility to not discriminate against medical practitioners who exercise their conscience, First Amendment free speech rights, or whistle blower rights, and to require hospitals, critical access hospitals, rural emergency hospitals, and other health care facilities that perform abortions to develop a policy that does not require medical practitioners to participate in abortions unless a practitioner, in writing, opts into participating in these services.

ARM 37.106.301
The department proposes to amend this rule to incorporate, for purposes of the rules amended in this rulemaking, the relevant definitions from HB 303, codified at 50-4-1101, MCA. The definitions in HB 303 provide important context and scope to the proposed requirements.

The department proposes to not incorporate the definition of "health care institution" in the amendments. "Health care institution" would be excluded because while the department licenses and regulates some of the facility types listed within the definition found at 50-4-1101, MCA, the department does not have authority with

respect to other entities listed in the definition of "health care institution." The department is not authorized to license and regulate medical centers, physician organizations, professional associations, private physicians' offices, pharmacies, medical school, nursing schools, or other medical training facilities. Of the types of medical institutions listed, the department clearly has authority to regulate public or private hospitals, outpatient centers for primary care, outpatient centers for surgical services, and long-term care facilities. In addition, the definition of "health care institution" includes the catchall "any other entity or location in which health care services are performed." This seems to align fairly well with the definition of "health care facility," which is defined as "all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual." See 50-5-101(20)(a), MCA. Accordingly, the department proposes to use "health care facility" in place of "health care institution" since that term would seem to encompass all of the types of "health care institutions" over which the department has regulatory authority. The department specifically asks for comment on this approach.

ARM 37.106.310

The department proposes to amend ARM 37.106.310 to explain that the department will not (1) require health care facilities to participate in health care services contrary to their conscience, (2) discriminate against health care facilities for exercising conscience, (3) deny health care facilities any privileges, immunities, or public benefits based on their exercise of conscience, or (4) discriminate against health care facilities for exercising whistleblower rights with respect to violations of conscience rights. The department further proposes that a health care facility can establish a conscience claim by reference to its governing documents. These proposed provisions would implement the applicable provisions in 50-4-1102, 50-4-1104, 50-4-1105, and 50-20-111, MCA.

ARM 37.106.330

The department proposes amendment to this rule to require a biannual review of policies and procedures for all health care facilities, to require that all health care facilities develop policies and procedures that require the facility to not discriminate against practitioners who exercise their First Amendment free speech rights, and to require hospitals, critical access hospitals, rural emergency hospitals, and other health care facilities that perform abortions to develop a policy that does not require medical practitioners to participate in abortions unless a practitioner, in writing, opts into participating in these services.

The department proposes to change the frequency of the required review of policies and procedures from every year to every other year because the department has determined that that provides sufficient frequency to ensure that policies and procedures remain up to date.

The department proposes to require health care facilities to develop policies and procedures on the exercise of conscience by medical practitioners to help ensure

compliance with the provisions of HB 303 that are applicable to the health care facilities that the department regulates. In that regard, and consistent with the requirements of HB 303, the department proposes certain specific topics to be included in such policies and procedures. In addition, so that medical practitioners understand their conscience rights – and the management of health care facilities understand their obligations with respect to the exercise of conscience by their staff – the department proposes to require policies and procedures on training on such rights and obligations. Finally, in order to protect the privacy of medical practitioners, the department proposes to require policies and procedures on maintaining the confidentiality of information on the exercise of conscience by medical practitioners.

The department proposes to specify which health care facilities are required to have policies around abortion services as not all health care facilities as defined in 50-5-101, MCA, provide abortion services. The department identified the types of facilities that may provide abortions, but welcomes comments on other providers that could provide abortion services, and would therefore would be required a develop and implement such a policy.

Fiscal Impact

This proposed rule amendments have no fiscal impact.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., August 23, 2024.

6. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above.

8. An electronic copy of this notice is available on the department's web site at https://dphhs.mt.gov/LegalResources/administrativerules, or through the Secretary of State's web site at rules.mt.gov.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by email on April 24, 2024.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

11. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Gregory Henderson
Gregory Henderson
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State July 16, 2024.

BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 38.2.101 pertaining to the model procedural rules	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. The Department of Public Service Regulation proposes to amend the above-stated rule.

2. The Department of Public Service Regulation will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Service Regulation no later than 5:00 p.m. on August 23, 2024, to advise us of the nature of the accommodation that you need. Please contact the Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT, 59620-2601; telephone (800) 646-6150; fax (406) 444-7618; or e-mail pschelp@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

38.2.101 MODEL PROCEDURAL RULES (1) The Department of Public Service Regulation ~~has herein adopted~~ adopts and ~~incorporated~~ incorporates by reference the Attorney General's Model Procedural Rules ~~1.3.205 through 1.3.210 concerning rule making, and~~ ARM 1.3.226 through 1.3.229 concerning declaratory rulings~~, by reference to such rules~~.

(2) The referenced model rules may be reviewed at the department's business office or online at the Secretary of State's website, https://rules.mt.gov.

AUTH: 2-4-201, MCA
IMP: ~~2-4-302, 2-4-303, 2-4-304, 2-4-305~~, 2-4-501, MCA

REASON: Amendment of ARM 38.2.101 is necessary for four reasons. First, the model rules concerning rulemaking, ARM 1.3.205 through 1.3.210, have been transferred and repealed. Second, this proposed rulemaking intends to incorporate the current version of the the model rules concerning declaratory rulings, ARM 1.3.226 through 1.3.229, which have been amended since the last time these rules were incorporated by the department. Third, a rule adopting a model rule must state where a copy of the omitted material may be obtained, pursuant to 2-4-307(2), MCA. Fourth, the implementation citation should be updated to remove the statutes concerning rulemaking and add the statute concerning declaratory rulings.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to the Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT, 59620-2601; telephone (800) 646-6150; fax (406) 444-7618; or e-mail pschelp@mt.gov; and must be received no later than 5:00 p.m. on August 23, 2024. Please reference Docket No. 2024.07.072 when submitting a comment.

5. The Montana Consumer Counsel, 111 North Last Chance Gulch, Suite 1B, Helena, MT 59620-1703, telephone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments to the Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT 59620-2601, no later than 5:00 p.m. on August 23, 2024.

7. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. The department is unable to determine how many persons will be directly affected by this rulemaking because it is unknown how many petitions for declaratory ruling may be filed in the future. However, the department estimates that ten percent of those directly affected is one person based on approximately one petition for declaratory ruling filed with the Public Service Commission from 2018 to the present.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the department. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. The department's programs are: electric utilities, providers and suppliers; natural gas utilities, providers and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines; motor carriers; rail carriers; and administrative procedures. Notices will be sent by e-mail unless a mailing preference is noted in the request. Written request may be mailed or delivered to the Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT, 59620-2601; telephone (800) 646-6150; fax (406) 444-7618; e-mail pschelp@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at rules.mt.gov.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ AMANDA S. WEBSTER
Amanda S. Webster
Rule Reviewer

/s/ JAMES BROWN
James Brown
President
Public Service Commission

Certified to the Secretary of State July 16, 2024.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.17.101, 42.17.103, 42.17.105, 42.17.111, 42.17.113, 42.17.120, 42.17.122, 42.17.133, 42.17.203, 42.17.218, 42.17.304 through 42.17.306, 42.17.308, 42.17.313, and 42.17.601 through 42.17.604 and the repeal of ARM 42.17.131, 42.17.223, 42.17.310, 42.17.311, 42.17.315, and 42.17.317 pertaining to withholding and estimated income tax payments and the department's implementation of Senate Bill 399 (2021), Senate Bill 121 (2023), and House Bill 447 (2023)	)))))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On August 19, 2024, at 1:00 p.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on August 2, 2024. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY The department proposes to amend and repeal the above-described rules for the primary purpose of implementing Senate Bill 399 (2021) (SB 399), Senate Bill 121 (2023) (SB 121), and House Bill 447 (2023) (HB 447) relating to withholding and estimated income tax payments.

Among its notable enactments, SB 399 simplified Montana individual income tax filing through revised filing statuses, revised calculation of taxable income, and repealed multiple tax credits. Accordingly, it is necessary for the department to amend or repeal certain administrative rules across ARM Title 42, chapter 17, to align with the above-described legislative changes to Montana's tax code.

SB 399 aligns individuals' filing status with their federal filing status (especially for married couples) and creates separate tax brackets for the different filing statuses. The proposed amendments and repeals seek to remove unnecessary language and rules related to filing status. The guidance in ARM 42.17.105 for employers and their wage withholding is updated to reflect the changes in SB 399 as well as SB 121 which lowered the tax rates for individuals.

HB 447 created a Montana income tax exemption for certain employees working in the state on a temporary basis and also created an accompanying exemption for employer wage withholding. Since the affected statutes provide straightforward requirements for the exemption, amendments to rule are only necessary as cross references to the new provisions.

The remaining changes for wage withholding provide clarity in terminology and updates to reflect current department practice and processes. Further, there are references throughout the rules chapter that list the department's physical address and website as a means for submitting forms to the department. Because these are both subject to change, the department proposes to remove them and rely on the guidance provided through our website and form instructions.

The department also proposes amendments to clarify mineral royalty withholding definitions and procedures in ARM 42.17.101 and subchapter 6. The changes will better define when a royalty payment remitter is separate from a producer and how that distinction affects royalty income thresholds and exemptions.

While this general statement of reasonable necessity covers the basis for the proposed rule amendments and repeals, it is supplemented below to explain rule-specific proposals.

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

42.17.101 DEFINITIONS The following ~~terms pertain~~ definitions apply to this chapter:

~~(1) "Advanced mineral payments" are payments made to royalty interest owners that represent the royalty interest owner's future share of the receipts from the sale of the natural resource.~~

~~(2)~~ (1) "Individual" means a worker who renders service in the course of an occupation.

~~(3)~~ (2) "Lookback letter" means the letter sent to employers notifying them of their filing frequency for employee wage withholding.

~~(4)~~ (3) "Mineral payments" ~~are~~ mean payments made to royalty interest owners that represent the royalty interest owner's future share of the receipts from the sale of the natural resource.

~~(5)~~ (4) "Net royalty amount payable" means the amount of mineral proceeds subject to withholding. This amount is equal to the gross royalty payments less any taxes and other expenses deducted pursuant to the royalty agreement in effect.

~~(6)~~ (5) "Net taxable earnings" means an employee's gross earnings ~~minus the number of the employee's claimed withholding allowances multiplied by the withholding exemption amount provided in 15-30-2114, MCA for the year the Montana withholding tables were last revised~~ less the employee payments described

in ARM 42.17.103(1).

~~(7)~~ (6) "Overriding royalty interest" means ownership in a percentage of production or production revenues, free of the cost of production, created by the lessee, company and/or working interest owner and paid by the lessee, company and/or working interest owner out of revenue from the well.

~~(8)~~ (7) "Person" means any natural person, company, corporation, association, partnership, joint venture, cooperative, estate, trust, receiver, or any other party or entity that has a working interest, royalty interest, overriding royalty interest, production payment, production payment including in-kind exchanges, or any other ownership interest entitled to production proceeds from deposits in this state.

~~(9)~~ (8) "Producer" ~~is~~ means the person that extracts natural resources from deposits in the state.

~~(10)~~ (9) "Remitter" means the ~~individual, entity, or trust~~ person obligated under a mineral lease to pay royalties to the royalty owner or their assignee, to deliver minerals to a purchaser to the credit of the royalty owner or their assignee, or to pay a portion of the proceeds of the sale of the minerals to the royalty owner or their assignee. A producer that is not paying mineral royalties directly to a mineral royalty owner is not a remitter.

~~(11)~~ (10) "Reporting forms" include, but are not limited to:

(a) Form MW-1, the Montana Withholding Tax Payment Voucher;

(b) Form MW-3, the Montana Annual W-2 1099 Withholding Tax Reconciliation form;

(c) Montana Employee's Withholding Allowance and Exemption Certificate form (Form MW-4);

(d) Form W-2, the federal wage and tax statement form;

(e) Form RW-1, the Mineral Royalty Withholding Tax Payment Voucher form;

(f) Form RW-3, the Montana Annual Mineral Royalty Withholding Tax Reconciliation form; and

(g) ~~Form 1099,~~ All forms included in the federal Information Return Series.

~~(12)~~ (11) "Take in kind" means an operator or non-operator who elects to receive production in lieu of proceeds from the sale of production.

AUTH: 15-30-2547, 15-30-2620, MCA
IMP: 15-30-2501, 15-30-2538, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.17.101 to improve definitions and clarify who is considered the remitter of mineral royalty payments made to the royalty owners. The definition of remitter is important because a remitter is responsible for submitting withheld amounts to the department. Determining who is considered a remitter also affects whether certain thresholds for exemptions from withholding are met.

The department also proposes to remove the definition in current (1) because the definition is not used in the chapter and is duplicative to the definition of mineral payment in proposed (3).

The amendment to proposed (5) is made as a result of SB 399's change to

the definition of taxable income.

42.17.103 OTHER PAYMENTS; DESIGNATED DISTRIBUTIONS; ELECTION TO WITHHOLD (1) Employee contributions to pensions, profit sharing, stock bonus, or annuity plans, deferred compensation and cafeteria plans where the payments are not otherwise considered wages, an IRA, or commercial annuity contracts are exempt from withholding to the extent that the contributions are not includable in the employee's adjusted gross income for federal income tax purposes.

(2) Sick pay paid by a third party is not subject to withholding taxes unless the payor receives a written request from the employee, or the employer and the third party entered into an agreement that makes the third party responsible for the reporting and payment of withholding taxes. When a third party reports and pays withholding taxes, the third party must use its own name and tax identification number instead of the employer's.

(3) A recipient of any designated distribution from a deferred compensation plan, individual retirement plan, or commercial annuity, as defined in IRC 3405, may ~~elect to have~~ request the payor withhold state income tax from these payments by filing a Form MW-4 with the payor.

(a) The recipient's tax withholding election shall specify a flat dollar amount of income tax to be withheld by the payor from each designated distribution ~~or a number of allowances claimed by the recipient to be used with the withholding tax tables provided by the department~~. The election shall also specify the name, current address, and taxpayer identification number of the recipient. Any change or revocation of a previously filed election shall include the same information as required in this rule for an initial election except the recipient should indicate whether a change or revocation of a previously filed election is being made. In this case, the payor shall remit the withholding tax to the department as required in ARM 42.17.113.

(b) The payor has the option to choose not to withhold from any designated distribution if the amount to be deducted and withheld is less than $10. Additionally, income tax withholding by the payor from any designated distribution shall not be required if the amount to be withheld would reduce the net amount of the distribution to less than $10.

(c) The payor of distributions, made up in whole or in part of contributions made pursuant to (1) or solely of employer contributions, shall notify the recipients of the availability to state withholding and the requirements for the payment to state income tax on the taxable portion of a distribution.

(i) Payors shall notify recipients of the state requirements at the same time recipients are notified of the federal election requirements under IRC 3405(d)(10)(B).

(ii) Payors shall notify recipients at the time of distribution and yearly thereafter.

(4) A recipient of unemployment compensation may request that the payor withhold state income tax from each payment by filing a Form MW-4 with the payor.

AUTH: 15-30-2620, MCA
IMP: 15-30-2501, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.17.103 to improve grammar in (3) and provide in (4) that a recipient can request the payor withhold Montana income tax. Among the changes in SB 399 is the elimination of the exemption from Montana tax of unemployment compensation. The proposed addition of (4) will aid affected individuals by providing a way to request withholding to pay any tax owed.

42.17.105 COMPUTATION OF WITHHOLDING (1) Employers shall calculate the state income tax amount to withhold from employees according to the length of the payroll period, the employee's ~~gross wages, the number of allowances claimed by the employee~~ net taxable earnings, the employee's federal filing status, and any extra withholding reported on Form MW-4, ~~and~~ using the department's "Montana Withholding Tax Tables~~,~~." ~~provided online at www.mtrevenue.gov.~~ The tables are based on the formulas provided in (2) and (3) and show the amount to withhold each pay period.

(2) Montana withholding tables are based on the following annual withholding formulas as adjusted annually for inflation and changes to federal tax parameters. Wage withholding is equal to the following amounts based on the employee's federal filing status:

(a) ~~1.80% of the first $7,105 of net taxable earnings; plus~~ Single or married filing separately:

(i) 0% of the first $14,600; plus

(ii) 4.7% of the next $20,500; plus

(iii) 5.9% of the net taxable earnings over $35,100.

(b) ~~4.40% of the next $8,120 of net taxable earnings; plus~~ Married filing jointly or qualifying widow(er):

(i) 0% of the first $29,200; plus

(ii) 4.7% of the next $41,000; plus

(iii) 5.9% of the net taxable earnings over $70,200.

(c) ~~6.00% of the next $106,575 of net taxable earnings; plus~~ Head of household:

(i) 0% of the first $21,900; plus

(ii) 4.7% of the next $30,750; plus

(iii) 5.9% of the net taxable earnings over $52,650.

~~(d) 6.60% of net taxable earnings over $121,800.~~

(3) Withholding formulas for nonannual payroll periods are calculated by dividing the dollar amounts for annual payroll in (2) by the ratio of the number of working days in a year to the number of working days in the payroll period. The following table shows payroll periods and the corresponding divisors:

Payroll Period	Divisor
Monthly	12
Semi-Monthly	24
Biweekly	26
Weekly	52
Daily	~~260~~ 365

(4) By ~~October 1~~ the end of each tax year, the department shall adjust the withholding formulas for inflation by either multiplying the dollar amounts in (2) ~~and the withholding exemption amount used in the determination of net taxable earnings in ARM 42.17.101 by the inflation factor, as defined in 15-30-2101, MCA~~ by the inflation factor defined in 15-30-2101, MCA, or by updating the values based on the adjusted amounts provided by the IRS for the new tax year.

(5) If the department determines that the inflation adjustment is immaterial, it may keep existing withholding tables in effect for another year.

AUTH: 15-30-2620, MCA
IMP: 15-30-2103, 15-30-2502, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.17.105 to provide updated calculations for wage withholding. SB 399 created new tax brackets based on filing status, so the calculations in rule are outdated and require amendment. The proposed amendments in (4) also change the timing of updating the values in the formula in order to provide more accurate calculations.

42.17.111 MONTANA INCOME TAX WITHHOLDING; FORM MW-4 FILING REQUIREMENTS (1) Every employer transacting business in Montana is required to withhold Montana state income tax from wages paid to an employee for services rendered within Montana, unless the compensation is specifically exempted under Montana law.

(2) Compensation which may be excludable from adjusted gross income under a United States tax treaty remains subject to Montana withholding as the determination whether a nonresident alien qualifies for tax treaty exclusion cannot be made until the individual's Montana income tax return is filed.

(3) Except as provided under 15-30-2513, MCA, ~~T~~temporary employment or employment of short duration within Montana does not relieve the employer of the obligation to withhold employee wages.

(4) Employers must provide each new employee a Form MW-4 for purposes of determining the amount of an employee's withholding or exemption status.

(5) If an employee fails to complete a Form MW-4, the employer shall calculate withholding using the single filing status calculation.

~~(4)~~ (6) The Amtrak Reauthorization and Improvement Act of 1990 exempts from state income tax and withholding the compensation of certain railroad, trucking, and air and water carrier employees unless they are Montana residents. The exemption from withholding applies only to nonresident interstate carrier employees and the employer applies the exemption based on the residency status claimed by the employee. No Form MW-4 is required for this exemption.

~~(5)~~ (7) Wages paid to an enrolled member of a Native American tribe are subject to withholding, except as provided in ARM 42.15.220.

(a) When the employee is an enrolled tribal member of the governing tribe of the reservation on which the enrolled tribal member works and resides:

(i) the wages earned by the employee are derived from reservation sources; and

(ii) the employee submits a Form MW-4 to the employer attesting that the employee resides on his or her reservation, together with a certificate of enrollment.

(b) When wages are derived from both reservation sources and nonreservation sources, only wages derived from reservation sources are exempt from withholding, provided the employee meets all the criteria in ~~(5)~~ (7)(a).

(c) When an employee does not reside on his or her reservation for an entire pay period, only wages earned while the employee was residing on the reservation are exempt from taxation, provided the employee meets all the criteria in ~~(5)~~ (7)(a).

~~(6)~~ (8) Wages paid to a resident of North Dakota for personal services rendered within Montana are not subject to withholding provided the employee has filed a Form MW-4, in accordance with ARM 42.17.134.

~~(7)~~ (9) Wages paid to the nonmilitary spouse of a military serviceperson for personal services rendered in Montana which meet the criteria in ARM 42.15.112, are not subject to withholding provided the employee has completed a Form MW-4.

~~(8)~~ (10) A withholding exemption claimed on Form MW-4 must be renewed annually by the last pay period in January. When an employee no longer needs or qualifies for an exemption, the employee must notify the employer by providing a new Form MW-4 without the previously claimed exemption. If an employee fails or refuses to provide the updated Form MW-4, the employer must withhold ~~on the basis of zero withholding allowances, in compliance with ARM 42.17.131~~ using the calculations for the single filing status.

(11) Exempt status claimed for federal purposes does not exempt an employee's wages from withholding requirements for Montana purposes.

AUTH: 15-30-2620, MCA
IMP: 15-30-2502, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.17.111 by transferring and revising relevant content regarding the submission of Form MW-4 from ARM 42.17.131(4) and (5) to this rule because they relate to the specific exemptions described in this rule. The proposed amendments also provide a timeline for submitting the form when an individual needs to renew an exemption. Finally, the rule is proposed for amendment to clarify that a federal exemption does not create an exemption from Montana withholding.

42.17.113 PAYMENTS (1) Failure to pay withheld amounts within the time provided, and the use thereof by the employer in forwarding its own business, is considered to be an illegal conversion of trust money. ~~The employer will not regard withheld wages as being equivalent to its own personal income tax indebtedness.~~ Penalties provided in 15-1-216 ~~and 15-30-2641~~, MCA, apply to any violation of the requirement to collect, truthfully account for, and pay amounts required to be deducted from employee wages.

(2) If an employer's payment requirement of withholding tax for state purposes conflicts with the federal tax deposit requirements, the employer may elect

to remit according to the federal schedule. The employer must provide the department with a copy of its federal notification.

(3) Once an employer becomes subject to withholding tax as provided in 15-30-2501, MCA, the employer must continue to withhold, and report, income tax from the employees' wages for all subsequent calendar years.

AUTH: 15-30-2620, MCA
IMP: 15-1-208, 15-30-2504, 15-30-2510, ~~15-30-2641,~~ MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.17.113 to remove unnecessary language in (1) that is redundant to statute and amends the reference to 15-30-2641, MCA, in (1) and the list of implementing citations because House Bill 72 (2019) repealed that statute.

42.17.120 EMPLOYER'S FAILURE TO WITHHOLD (1) If an employer fails to deduct and withhold the tax from wages as required under 15-30-2502, MCA, and thereafter the income tax against which the withholdings may be credited is paid, the amount required to be deducted and withheld shall not be collected from the employer. However, ~~such~~ any payment does not relieve the employer from liability for penalties, interest, or additions to the tax ~~applicable~~ because of ~~such~~ its failure to deduct and withhold. The employer will not be relieved ~~under this rule~~ from ~~their~~ its liability for payment of the amounts required to be withheld unless ~~they~~ it can show that the income tax against which the required withholdings may be credited has been paid.

AUTH: 15-30-2620, MCA
IMP: 15-30-2502, 15-30-2503, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.17.120 to improve the grammar and style of the rule.

42.17.122 RETURNS OF INFORMATION AGENTS (1) Federal Forms 1099~~s,~~ and U.S. Information Returns~~,~~ are required to be filed ~~for certain dividends, interest in excess of $10, royalties, payments to retirement plans, rents, salaries, wages, prizes, awards, annuities, pensions, and real estate transactions~~ as specified in 15-30-2616, MCA. Federal Forms 1099~~s~~ may be filed on paper documents or electronically. The dates for filing the information returns with the department are the same as the due dates for filing the corresponding federal return. ~~The returns are to be filed with:~~

~~Montana Department of Revenue~~
~~P.O. Box 5835~~
~~Helena, Montana 59604-5835.~~

(2) Paper documents ~~are to~~ must be prepared on the appropriate federal

information return and a copy filed with the department. Returns filed on paper forms ~~are to~~ must be accompanied by a copy of federal Form 1096, Annual Summary, summarizing the information being reported to the department.

(3) Federal Forms 1099~~s~~ filed electronically are to conform to the specifications outlined in Federal Publication 1220 for the applicable year.

AUTH: 15-30-2620, MCA
IMP: 15-30-2616, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.17.122 to remove unnecessary language which has become outdated due to the addition of new types of federal Forms 1099.

42.17.133 TREATMENT OF SUPPLEMENTAL WAGES - STATE INCOME TAX WITHHOLDING (1) If supplemental wages, such as bonuses, commissions, or overtime pay, are paid at the same time as regular wages, the state income tax to be withheld should be determined as if the total of the supplemental and the regular wages were a single wage payment for the regular payroll period.

(2) If the supplemental wages are paid at a different time, the employer may determine the state income tax to be withheld by adding the supplemental wages either to the regular wages for the current payroll period or to the regular wages for the last preceding payroll period within the same calendar year.

(3) In lieu of the above, the employer may withhold on supplemental wages at the rate of ~~6~~ five percent.

AUTH: 15-30-2620, MCA
IMP: 15-30-2501, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.17.133 to lower the supplemental wage withholding rate described in (3). SB 399 and SB 121 lowered the top tax rates, so the department believes a corresponding reduction in the supplemental wage withholding rate to five percent is sufficient.

42.17.203 RECORDS TO BE KEPT BY EMPLOYER (1) Employers must keep employment records for each employee for five years from date of payment and make records available for department review, as provided by ARM 42.2.305. The records must show:

(a) For each pay period:

(i) the beginning and ending dates;

(ii) the total wages, as defined in 15-30-2501, MCA, for employment in the pay period; and

(iii) the number and date of weeks in which there were one or more employees.

(b) For each employee:

(i) the employee's full name;

(ii) social security number;

(iii) wages for each pay period, showing separately:

(A) money wages payable including special payments or constructive payment of wages;

(B) reasonable cash value of remuneration by the employer in any medium other than cash;

(C) estimated or actual amount of gratuities received from persons other than employer; or

(D) special payments of any kind, including annual bonuses, gifts, prizes, etc.

(iv) the date on which the employee was hired, rehired, or returned to work after a temporary layoff;

(v) the date employment was terminated;

(vi) the cause of any termination, such as voluntary by employee, layoff, discharge, or death;

(vii) the method of payment:

(A) whether the employee is paid a salary or commission, or paid on an hourly, or by-piece basis; and

(B) if the employee is paid on a fixed daily basis, the employee's daily rate and the customarily scheduled days per week prevailing in the establishment for their occupation; and

(C) if the employee is paid on a piece rate or other variable pay basis.

(viii) documents supporting employee expense reimbursements; and

(ix) when an exemption under ARM 42.17.111 is in effect, the portion of non-exempt wages paid to the employee for each pay period, and the method used to calculate this portion.

(2) Evidence of business ownership including, but not limited to, partnership agreements and documents issued or acknowledgments by the Secretary of State.

(3) The department is authorized to examine all records necessary for the administration of the withholding and estimated tax law (Title 15, chapter 30, part 25, MCA). Examples of these records include:

(a) payroll records;

(b) disbursement records;

(c) tax returns;

(d) personnel records;

(e) minutes of meetings;

(f) loan documentation;

(g) federal and state withholding ~~allowance and~~ exemption certificates; and

(h) any other records which might be necessary to determine employer liability.

AUTH: 15-30-2620, MCA
IMP: 15-30-2504, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.17.203(3)(g) to remove inaccurate terminology.

42.17.218 EMPLOYER REGISTRATION (1) Every employer required to withhold Montana income tax must register for a Montana tax identification number on Form GenReg, Montana Department of Revenue Business Registration, which is provided by the department. A new employer who has acquired the business of another employer must not use the predecessor's identification number. The form can be submitted online through the department's website or by mailing it to the address listed on the form. ~~Application for a Montana tax identification number shall be sent to:~~

~~Department of Revenue~~
~~P.O. Box 5805~~
~~Helena, Montana 59604-5805.~~

(2) Registration is not considered complete unless:

(a) the federal employer identification number appears on the registration; and

(b) all applicable social security numbers of the owners, partners, corporate officers, or other principals appear on the registration.

(3) Failure to register does not relieve an employer from withholding, reporting, and remitting state income tax.

AUTH: 15-30-2620, MCA
IMP: 15-30-2503, 15-30-2509, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.17.218 to reflect the department's general statement of reasonable necessity for the removal of address information in rule as a means for submitting forms to the department and relying on the guidance provided on our website and form instructions.

42.17.304 DETERMINATION OF TAX LIABILITY FOR PRECEDING TAX YEAR; DETERMINATION OF TAX PAID FOR CURRENT TAX YEAR (1) A taxpayer's tax liability for the preceding tax year is the total tax imposed by Title 15, chapter 30, MCA, less any nonrefundable tax credits allowed under Montana law, as shown on the taxpayer's return.

Example: A taxpayer has a tax, before applying nonrefundable credits, of $5,000. The taxpayer has a nonrefundable ~~energy conservation installation~~ recycling credit of $500. The taxpayer's tax liability for the prior year for estimated tax purposes is $4,500 computed as follows:

Tax before nonrefundable credit	$5,000
nonrefundable credits	($500)
tax liability	$4,500

(2) The amount of tax paid for the current year is the sum of the withholding and estimated tax payments plus any refundable credit(s) claimed, as shown on the taxpayer's return.

A taxpayer has $800 in Montana withholding, an elderly homeowner/renter credit of $400 and paid $200 in estimated payments. The amount of tax the taxpayer has paid for the current year is $1,400 computed as follows:

Montana tax withheld	$800
Estimated payments	$200
Refundable elderly homeowner/renter credit	$400
Total taxes paid for the current year	$1,400

(3) To determine the preceding tax year liability of an individual who participates in a composite return, the following requirements apply:

(a) For a taxpayer who was a participant in a composite return for the preceding year, the tax liability for the preceding year is the participant's preceding year composite tax liability.

(b) For a taxpayer who filed a Montana individual income tax return for the preceding tax year and for the current year, and participated in a composite return filing, their tax liability for the preceding tax year is their individual liability as determined in (1).

(4) Estimated payments made by a partnership or S corporation ~~with respect to a participant's composite tax liability~~ for taxes owed under Title 15, chapter 30, MCA, are not taxes paid by the ~~participant~~ owner for the current tax year. ~~The rules for filing composite returns are located in ARM Title 42, chapter 9, subchapter 2.~~

AUTH: 15-30-2620, MCA
IMP: 15-30-2512, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.17.304 to remove a reference to a credit that is no longer available. Section (4) of the rule is also proposed for amendment to reflect that partnerships and S corporations, not their owners, are responsible for making estimated payments for pass-through entity tax and composite tax liabilities.

42.17.305 ESTIMATED TAX AND PAYMENT OF INSTALLMENTS

(1) Except as provided in 15-30-2512, MCA, a taxpayer is required to pay at least 100 percent of their tax liability for the preceding tax year or 90 percent of their tax for the current tax year through withholding and estimated payments. If they do not, they will be liable for interest on the underpayment, as provided in 15-30-2512, MCA. In addition, unless the department grants a taxpayer an extension to pay an installment of estimated tax, as provided in ARM 42.17.306, a taxpayer required to make installment payments of estimated tax who fails to timely pay an installment is liable for interest on the unpaid installment from the due date of the installment to the earlier of the date of payment or the due date of their income tax return, not including extensions, as provided in 15-1-216, MCA, and ARM 42.2.306.

(2) Taxpayers may complete the ~~Form~~ Worksheet ESW, Montana Individual Estimated Income Tax Worksheet, to determine if they are required to make current year installment payments of estimated tax and, if necessary, to determine the amount. If a taxpayer's income fluctuates or is seasonal, employing the annualization method may lower the amount of one or more installments. A taxpayer using the optional annualization method must complete the ~~Form~~ Worksheet ESA, Annualization Worksheet. Taxpayers are not required to file the estimated tax worksheet with their income tax return, but it is a tax record the taxpayer must retain and provide the department on request. Taxpayers using the annualization method must file ~~Form~~ Worksheet ESA with their income tax return. If the taxpayer files their individual income tax return electronically, the ~~Form~~ Worksheet ESA is a tax record the taxpayer must retain and provide the department on request.

~~(3) The department will provide taxpayers with estimated tax payment coupons on request. Unless paid electronically, as set forth in ARM 42.5.201 and 42.5.202, installment payments of estimated tax must be accompanied by a payment voucher and be:~~

~~(a) personally delivered to:~~
~~Montana Department of Revenue~~
~~Sam W. Mitchell Building~~
~~125 North Roberts, 3rd Floor~~
~~Helena, Montana; or~~
~~(b) mailed to:~~
~~Montana Department of Revenue~~
~~P.O. Box 6309~~
~~Helena, Montana 59604-6309.~~

~~(4) If a taxpayer has not received estimated tax payment vouchers from the department before the first installment due date, the payment should be accompanied by a written statement setting forth that the payment is an estimated tax payment, the tax year, the due date of the installment, and the taxpayer's name, mailing address, and social security number and be:~~

~~(a) personally delivered to:~~
~~Montana Department of Revenue~~
~~Sam W. Mitchell Building~~
~~125 North Roberts, 3rd Floor~~
~~Helena, Montana; or~~
~~(b) mailed to:~~
~~Montana Department of Revenue~~
~~P.O. Box 6308~~
~~Helena, Montana 59604-6308.~~

~~(5) Payment vouchers will be mailed to the taxpayer if a request for them is included with the first installment. Payments must be received by the department on or before the installment due date.~~

~~(6)~~ (3) Estimated tax payments are not required for a tax year shorter than four months. Individuals who have a short tax year of four months or more are required to pay estimated tax on the following dates:

(a) The first installment is due on April 15 or on the 15th day of the fourth month of the tax year;

(b) The second and third installments are due on the 15th day of the sixth month of the tax year and the 15th day of the ninth month of the tax year if the short tax year does not close prior to these dates; and

(c) The final installment is due on the 15th day of the first month of the succeeding tax year.

~~(7)~~ (4) If fewer than four installments are required, the applicable percentage of the required annual amount for each installment is increased. The applicable percentage per installment is as follows:

(a) 100 percent for one installment;

(b) 50 percent for two installments; and

(c) 33 1/3 percent for three installments.

Example 1: If the short tax year is the 10-month period from January 1 through October 31, the estimated tax must be paid in four installments, on April 15, June 15, September 15, and November 15. Each installment is 25 percent of the total payment required.

Example 2: If the short tax year is the 9-month period from January 1 through September 30, the estimated tax must be paid in three installments, on April 15, June 15, and October 15. With three installments, each installment is 33 1/3 percent of the total payment required.

AUTH: 15-30-2620, MCA
IMP: 15-30-2512, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.17.305 to reflect the department's general statement of reasonable necessity for the removal of address information in rule as a means for submitting forms to the department and relying on the guidance provided on our website and form instructions.

42.17.306 WRITTEN REQUEST FOR EXTENSION - PAYMENT OF ESTIMATED TAX (1) A taxpayer may request an extension of time to pay all or a part of an installment of estimated taxes by making a written request identifying the evidence showing that undue hardship would result to the taxpayer if the extension were refused. The extension will not be granted under a general statement of "hardship."

~~(2) The written request, with supporting documents, must be:~~
~~(a) personally delivered to:~~
~~Montana Department of Revenue~~
~~Sam W. Mitchell Building~~
~~125 North Roberts, 3rd Floor~~
~~Helena, Montana; or~~
~~(b) mailed to:~~
~~Montana Department of Revenue~~
~~P.O. Box 5805~~
~~Helena, Montana 59604-5805.~~

~~(3)~~ (2) The request for extension must be received by the department 30 days

before the installment date for which the extension is requested. The department will, within 30 days if possible, grant, deny, or tentatively grant the request subject to certain conditions.

~~(4)~~ (3) If an extension is granted, no further notice or demand will be given, and the taxpayer must pay the estimated payment on or before the expiration of the period of the extension. If an extension is granted and the extended installment timely paid, the penalty and interest provided in 15-1-216, MCA, is not imposed. Section 15-30-2512, MCA, which provides for interest on an underpayment of tax, is in addition to the uniform penalties and interest provided in 15-1-216, MCA, and is imposed whether or not a taxpayer obtains an extension as provided in this rule.

~~(5)~~ (4) While the department may grant an extension of up to six months after the installment due date, it will not grant an extension beyond the original due date of the return, typically April 15 following the tax year.

~~(6)~~ (5) The granting of an extension of time for payment of one installment does not extend the time for payment of any subsequent installments.

~~(7)~~ (6) Inability to pay does not constitute "hardship."

~~(8)~~ (7) Examples of what does, and what does not, constitute "hardship" may be found in ARM 42.3.106.

AUTH: 15-30-2620, MCA
IMP: 15-30-2512, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.17.306 to reflect the department's general statement of reasonable necessity for the removal of address information in rule, as a means for submitting forms to the department, and relying on the guidance provided on our website and form instructions.

42.17.308 DETERMINING ANNUALIZED INCOME (1) Taxpayers who use the annualization option ~~in estimating their~~ to estimate the current year tax must accurately determine the amount of income and deductions for each installment period.

(2) Income or expenses that are paid occasionally during a year cannot be spread out during the year in determining the required installments. For example, a taxpayer who distributes year-end bonuses to employees but does not determine the amount of the bonuses until the last month of the tax year may not deduct any portion of such year-end bonuses in determining taxable income for any installment period other than the final installment period for the tax year, since deductions are not allowable until paid or accrued, depending on the taxpayer's method of accounting.

AUTH: 15-30-2620, MCA
IMP: 15-30-2512, MCA

REASONABLE NECESSITY: The department proposes a minor grammatical amendment to ARM 42.17.308(1) to improve clarity of the stated requirement.

42.17.313 PAYMENT OF ESTIMATED TAX - DECEDENT (1) Joint estimated tax payments may not be made after the death of either spouse. The surviving spouse must recompute his or her estimated tax for the remainder of the year and pay separate installments for each remaining installment due date.

(2) Estimated tax payments are not required after the date of death for a deceased taxpayer.

(3) If a joint return is filed for the last tax year, the taxpayers' joint estimated tax payments may be applied on the return.

~~(4) If separate returns are filed for the last tax year of a deceased spouse, any joint estimated tax payments must be split equally.~~

AUTH: 15-30-2620, MCA
IMP: 15-30-2512, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.17.313 as the filing circumstance in (4) will not occur under SB 399's statutory changes.

42.17.601 ADVANCE PAYMENTS AND FURTHER DISTRIBUTIONS

(1) Advance mineral royalty payments that relate to, refer to, or concern production are subject to the mineral royalty tax withholding requirements.

(2) Each remitter who disburses funds that are owed to any person owning a royalty interest, overriding royalty interest, production payment, or any other nonworking interest in minerals produced in this state, is subject to the withholding requirement of 15-30-2538, MCA. The exceptions under 15-30-2539(2), MCA, do not apply to remitters who are not producers.

(3) If a mineral is taken in-kind by a royalty owner, the take-in-kind owner must forward ~~6~~ six percent of the net value of the mineral that was taken in-kind to the department unless they are exempt from withholding under 15-30-2539 or 15-31-102, MCA.

(4) ~~If you are a remitter and you are~~ Remitters providing accounting services~~,~~ ~~and these accounting services include fulfilling~~ that fulfill the requirements of 15-30-2541, MCA, for more than one producer~~, you~~ must remit separate withholding payments and submit a separate Form RW-3, Montana Mineral Royalty Withholding Tax Reconciliation Return, for each producer.

AUTH: 15-30-2547, MCA
IMP: 15-30-2538, 15-30-2539, 15-30-2541, 15-31-102, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.17.601(2) to improve clarity that the exceptions to mineral royalty withholding do not apply if the remitter is not also the producer. Section (4) proposes amendments to change referencing of the remitter from second-person perspective and to make the text more concise.

42.17.602 CLAIMING THE CREDIT FOR TAX WITHHELD (1) Claiming credit for the tax withheld shall be accomplished as follows:

(a) Credit may be claimed for the tax withheld on a Montana individual income tax return or a Montana corporate income tax return, with a copy of Form 1099-MISC attached, to substantiate the amount claimed.

(b) Taxpayers, excluding pass-through entities, that receive a Montana Schedule K-1 from a pass-through entity, as defined in 15-30-2101, MCA, may claim a refundable credit for the amount shown as their share of the tax withheld from Montana net royalty. Taxpayers that claim such a credit must keep copies of the federal and Montana Schedule K-1(s) in their records.

(c) Pass-through entities must determine the owner's distributive share of mineral royalty withholding in proportion of the owner's share of profit and loss from the pass-through entity.

(d) ~~A pass-through entity may claim mineral royalty withholding tax paid on its behalf as a credit against pass-through withholding tax owed by the pass-through entity on behalf of an owner in proportion of the owner's distributive share of profit or loss.~~ A pass-through entity must claim the mineral withholding tax paid on its behalf as a refundable credit against pass-through entity tax owed by the entity.

(e) A pass-through entity must claim the mineral withholding tax paid on its behalf as a refundable credit against composite tax owed by the pass-through entity on behalf of an owner in proportion of the owner's distributive share of income or loss.

(f) A pass-through entity may claim mineral royalty withholding tax paid on its behalf as a credit against pass-through withholding tax owed by the entity on behalf of an owner in proportion of the owner's distributive share of profit or loss.

~~(f)~~ (g) An estate or trust is entitled to credit for the tax withheld in proportion to the amount of royalty income that the estate or trust includes in Montana taxable income. A beneficiary is entitled to a credit for the tax withheld in proportion to the amount of royalty income the beneficiary must report on their Montana individual income tax return.

~~(g)~~ (h) Any person filing on a fiscal year ending other than December 31, must claim a credit for the withholding tax shown on the personal income tax return required to be filed during the year following the December closing period of the Form RW-3, Montana Mineral Royalty Withholding Tax Reconciliation Return.

~~(h)~~ (i) Production taxes cannot be claimed as withholding for mineral royalty withholding or as income tax withholding.

AUTH: 15-30-2547, MCA
IMP: 15-30-2539, 15-30-3312, 15-30-3313, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.17.602(1)(d) and (f) to improve clarity that mineral royalty withholding paid on behalf of a pass-through entity is claimed as a credit against the tax owed by the entity resulting from the royalty income.

42.17.603 APPLICABLE THRESHOLDS - CHANGE OF OWNERSHIP - PUBLICLY TRADED PARTNERSHIPS - NONPROFIT ORGANIZATIONS - EXEMPT ROYALTY OWNERS (1) There is not a requirement to withhold from payments to royalty interest owners if the producing entity's production does not exceed 100,000 barrels of oil and 500 million cubic feet of gas, based on the previous three calendar years' average production reported to the Montana Board of Oil and Gas Conservation. For example, the department will calculate whether payments for an entity's production are subject to withholding from their royalty interest owners for ~~2015~~ 20X5 by averaging the production numbers for calendar years ~~2011, 2012, and 2013~~ 20X1, 20X2, and 20X3 and comparing this average to the production exemption limits.

(2) If an entity does not have three years of recent mineral production records, the remitter may provide the department with information supporting the exemption from the withholding requirements of 15-30-2536, MCA. The department shall review this information to determine if an exemption is warranted and notify the remitter of the determination.

(3) On or before September 15 of each year, the department shall notify all oil and gas producers of their requirements as it relates to the provisions of 15-30-2538 and 15-30-2539, MCA. The department will notify all other mineral producers by September 15 only if they are required to withhold.

(4) If a person who is required to withhold on behalf of their royalty interest owners sold their mineral interests during the year and ceases to be the remitter, the person who acquired the mineral interests becomes the remitter and must continue to withhold ~~6~~ six percent of the net royalty payments from the royalty interest owners subject to the withholding requirements of 15-30-2538, MCA.

(5) If a remitter produces both oil and gas, and only one resource meets the requirements for withholding as provided in 15-30-2539, MCA, the withholding provisions apply to both oil and gas regardless of the production volumes of the other resource that does not meet the requirements of 15-30-2539, MCA.

(6) If a person not previously extracting resources in the state begins extracting from new or existing sources of natural resources in Montana (i.e., newly drilled oil or gas wells or a new mine), that person is required to withhold ~~6~~ six percent of the net royalty payments from the royalty interest owners subject to the withholding requirements of 15-30-2538, MCA.

(7) All persons that extract minerals other than oil and gas must withhold ~~6~~ six percent of the net royalty payments of all royalty interest owners subject to the withholding requirements of 15-30-2538, MCA.

(8) The person described in (7) may not be required to withhold net royalty payments from their royalty interest owners if the person can provide information that satisfies the department that the net royalty payments are immaterial.

(a) The department has defined an entity that has immaterial net royalty payments as an entity that has production amounts for minerals, other than oil and gas, with a value less than $5 million. The only filing requirement for this type of entity is the filing of the Form RW-3 ~~by January 31 of the following year~~ along with a listing of all royalty recipients. The $5 million value will be based on a three-year average of production value reported to the department's ~~Business Tax and Valuation Bureau~~ Natural Resources Unit. For example, the department will

calculate whether an entity is required to withhold from its royalty interest owners for ~~2017~~ 20X7 by averaging the valuation reported for ~~2013, 2014, and 2015~~ 20X3, 20X4, and 20X5.

(9) Section 15-30-2539, MCA, allows for a publicly traded partnership to be exempt from the withholding requirements of 15-30-2536 through 15-30-2547, MCA, provided the publicly traded partnership, that is a royalty owner, submits a report to both the remitter and the department. The report, which can be in the form of a letter, must contain the publicly traded partnership's letterhead and state that the partnership is publicly traded and the partnership requests exemption from 15-30-2536 through 15-30-2547, MCA. The request must be received by the remitter and the department prior to November 1 of the year prior to the calendar year in which the partnership requests exemption. Upon receipt of the report, the department will notify the partnership and the remitter of either acceptance or denial of the request within 30 days. The election does not need to be repeated annually unless requested by the department.

(10) Section 15-30-2539, MCA, allows for an organization that is exempt from taxation under 15-31-102, MCA, to be exempt from the withholding requirements of 15-30-2536 through 15-30-2547, MCA, provided the exempt organization, that is a royalty owner, submits a report to both the remitter and the department. The report, which can be in the form of a letter, must contain the exempt organization's letterhead and request exemption from 15-30-2536 through 15-30-2547, MCA. The request must be received by the remitter and the department prior to November 1 of the year prior to the calendar year in which the exempt organization requests exemption. Upon receipt of the report, the department shall notify the exempt organization and the remitter of either acceptance or denial of the request within thirty days. The election does not need to be repeated annually unless requested by the department.

(11) The exception provided in 15-30-2539, MCA, for payments to a federally recognized Indian tribe, applies to all mineral production described in the Mineral Leasing Act of ~~1939~~ 1938.

(12) According to 15-30-2539, MCA, the department grants remitters the authority to forego withholding the tax from royalty owners who meet the following qualifications:

(a) the amount of the royalty interest payment is less than $2,000 per year; or

(b) less than $166 per month.

(13) The remitter that does not withhold from royalty interest owners pursuant to (12) may, upon request from the department, be required to provide a list of the royalty interest owners.

AUTH: 15-30-2547, MCA

IMP: 15-30-2538, 15-30-2539, 15-30-2540, 15-30-2541, 15-30-2542, 15-30-2543, 15-30-2544, 15-30-2545, 15-30-2546, 15-30-2547, 15-31-102, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.17.603 to remove a date already specified in statute. The changes also specify the unit responsible for providing information in the determination of whether a

producer's production value can be considered immaterial. The rule also uses specific years in the examples in (1) and (8) and the department proposes a model that does not specifically reference a year. The department proposes a format that uses the sequence of years through the use of the last number in the year. The new format will be 20X1, 20X2, 20X3, etc. This method should be familiar to tax professionals and filers as the IRS uses this format in its regulations. Finally, the department proposes to correct the year of the Mineral Leasing Act referenced in (11).

42.17.604 REGISTRATION FOR WITHHOLDING (1) Every entity that extracts natural resources within the boundaries of Montana must register and file an application for a state identification number ~~on the form provided by the department~~ as prescribed in ARM 42.17.218.

(2) Any owner or operator who has acquired the business of another entity shall not use the predecessor's state identification number. The owner or operator must register before the due date of the first report. This applies to both new businesses and businesses which have been purchased.

(3) Each registration application must contain the applicable tax identification number assigned by the IRS.

(4) No registration is considered complete unless the federal identification number appears on the form.

(5) Not being registered does not relieve a remitter from the collection and reporting requirements.

AUTH: 15-30-2547, MCA
IMP: 15-30-2538, 15-30-2541, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.17.604 to cross reference ARM 42.17.218 which requires all entities conducting business in the state to register for a state identification number.

5. The department proposes to repeal the following rules:

42.17.131 EMPLOYEE'S WITHHOLDING ALLOWANCES

AUTH: 15-30-2620, MCA
IMP: 15-30-2502, MCA

42.17.223 DETERMINING EMPLOYEE STATUS

AUTH: 15-30-2620, MCA
IMP: 15-30-2523, MCA

42.17.310 DETERMINATION OF TAX LIABILITY - STATUS CHANGE FROM JOINT TO SEPARATE

AUTH: 15-30-2620, MCA
IMP: 15-30-2512, MCA

42.17.311 DETERMINATION OF TAX LIABILITY - STATUS CHANGE FROM SEPARATE TO EITHER A JOINT RETURN OR MARRIED FILING SEPARATE

AUTH: 15-30-2620, MCA
IMP: 15-30-2512, MCA

42.17.315 WAIVER OF INTEREST ON ESTIMATED TAX UNDERPAYMENT

AUTH: 15-30-2620, MCA
IMP: 15-30-2512, MCA

42.17.317 ESTIMATED PAYMENTS FOR MARRIED TAXPAYERS FILING SEPARATE RETURNS

AUTH: 15-30-2620, MCA
IMP: 15-30-2512, MCA

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than 5:00 p.m. August 26, 2024.

7. Todd Olson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

8. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 6 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

9. An electronic copy of this notice is available on the department's web site at www.mtrevenue.gov, or through the Secretary of State's web site at rules.mt.gov.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor of SB 399, Senator Hertz, was contacted by email on July 8 and on July 12, 2024. The primary bill sponsor for SB 121, Senator Beard, was contacted by email on July 8 and on July 11, 2024. The primary bill

sponsor for HB 447, Representative Thane, was notified by email on July 8 and on July 12, 2024.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Todd Olson	/s/ Scott Mendenhall
Todd Olson	Scott Mendenhall
Rule Reviewer	Deputy Director of Revenue

Certified to the Secretary of State July 16, 2024.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.2.402 pertaining to the simplification of processing tax clearance certificates	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 19, 2024, at 2:00 p.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rule. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on August 2, 2024. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

42.2.402 TAX CERTIFICATES – REQUIREMENTS (1) ~~The department may issue a tax certificate, referred to as a "Title 15 Certificate," to a domestic corporation or limited liability company (LLC) that has been involuntarily dissolved by the Montana Secretary of State (MSOS) if the business has filed all required tax returns and reports and has paid all taxes, including interest and penalties, owed by the entity. Effective May 6, 2011, an LLC that has only one member and has not elected to be taxed as a corporation is not required to provide a Title 15 certificate from the department to be reinstated under 35-8-912, MCA.~~ A tax certificate is a document a person or an entity can request from the department for the purpose of fulfilling the requirements of 15-31-524, 15-31-552, 16-4-401, 16-12-203, 35-6-201, 35-8-912, 35-8-1010, 35-14-1422, 35-14-1507, or 35-14-1509, MCA, or for the purpose of showing that the entity is in good standing with the department. A person or entity may request a tax certificate by filing an application on the department's online transaction portal, or by completing a paper form.

(2) ~~The department may issue a tax certificate, referred to as a "Dissolution/Withdrawal Certificate" to a domestic C or S corporation that wishes to voluntarily dissolve, and to a foreign C or S corporation and LLC that wishes to voluntarily withdraw, if the business has filed all required tax returns and reports and has paid all taxes, including interest and penalties, up to the date of the request.~~ In most situations, the department may issue a tax certificate only after a person or

entity files all required tax returns and reports and pays all taxes, including interest and penalties that are owed, if any. If the tax certificate is intended to address a reinstatement from a dissolution under 35-8-209 or 35-14-1420, MCA, or the dissolution or withdrawal of a foreign entity, the department may issue a certificate only after the person or entity files all required tax returns and pays all taxes imposed under Title 15, MCA.

(3) ~~The department may issue a tax certificate, referred to as a "Tax Clearance Certificate" to a domestic C or S corporation that has completed its dissolution or to a foreign C or S corporation that has completed its withdrawal, verifying that the corporation has filed all applicable returns, including a final return, and that all taxes owed by the corporation, including interest and penalties, have been paid through and including the corporation's final year of existence in Montana.~~ The department may issue a tax certificate if, at the time of applying, the person or entity is enrolled in a payment plan or other agreement, such as a settlement agreement, with the department and they have not defaulted on that payment plan or other agreement.

~~(4) The department will issue a tax certificate, referred to as a "Reviver Certificate" to a domestic C corporation whose corporate powers have been suspended or to a foreign C corporation whose right to do intrastate business in the state has been forfeited as provided in 15-31-523, MCA, for failure to file a corporation license tax return or to pay a corporation license tax and that is seeking to be relieved from the suspension or forfeiture as follows:~~

~~(a) if the application for relief from the suspension or forfeiture is made within one year or less after the date of the suspension or forfeiture and if the suspension was made because the corporation failed to file a required corporation license tax return, then the department will issue the certificate if the corporation has filed the required return and paid any associated tax, interest and penalties; or~~

~~(b) if the application for relief from the suspension or forfeiture is made within one year or less after the date of the suspension or forfeiture and if the suspension was made because the corporation failed to pay all or any part of its corporation license tax liability, then the department will issue the certificate if the corporation has paid the tax, interest and penalties.~~

~~(5) The department will also issue a tax certificate, referred to as a "Reviver Certificate" to a domestic C corporation whose corporate powers have been suspended or to a foreign C corporation whose right to do intrastate business in the state has been forfeited as provided in 15-31-523, MCA, for failure to file a corporation license tax return or to pay a corporation license tax and that is seeking to be relieved from the suspension or forfeiture as follows:~~

~~(a) if the application for relief from the suspension or forfeiture is made more than one year after the date of the suspension or forfeiture and if the suspension was made because the corporation failed to file a required return, then the department will issue the certificate if the corporation has filed the required return and paid twice the amount of any associated tax and penalties; or~~

~~(b) if the application for relief from the suspension or forfeiture is made more than one year after the date of the suspension or forfeiture and if the suspension was made because the corporation failed to pay all or any part of its corporation~~

~~license tax liability, then the department will issue the certificate if the corporation has paid twice the amount of tax and penalties.~~

~~(6) The department may issue a tax certificate, referred to as a "Certificate of Good Standing," to any entity wishing to show that it filed required tax returns and paid all tax, interest, and penalties. The Certificate of Good Standing will be issued when the department has all the information it needs to determine that all required returns have been filed and all taxes, penalties, and interest have been paid.~~

~~(7)~~ (4) The department will not ~~issue any~~ process a tax certificate request unless the application contains the person or entity's name, mailing address, and federal employer identification number (FEIN) ~~of the entity~~. If the entity is a single member LLC that has no employees and does not have an FEIN, the ~~single member~~ LLC shall use its owner's social security number (SSN) ~~or FEIN~~. If the entity is a C corporation requesting a tax ~~clearance~~ certificate ~~described in (3)~~ under 15-31-552, 35-14-1507, or 35-14-1509, MCA, ~~the entity~~ it must provide the additional documents and information ~~as provided~~ described in ARM 42.23.313.

~~(8) Except as provided in (9), the tax filing requirements of the single member LLC for purposes of obtaining a tax certificate, are separate from the tax filing requirements of its owner. Because an entity that is disregarded for tax purposes may, and usually does, have an obligation to file an information return (Form DER-1, Montana Disregarded Entity Information Return) with the department, a single member LLC cannot claim to be current on its tax filing requirements on the basis that its owner is current on the owner's tax filing requirements.~~

~~(9)~~ (5) For wage withholding purposes, a single member LLC that has not elected to be taxed as a corporation and its owner are considered to be the same employer. The department will not issue a tax certificate ~~for~~ to the single member LLC unless all withholding taxes have been paid by the single member LLC and the owner.

(6) A tax certificate issued by the department expires six months from the date of its issuance.

AUTH: 15-1-201, MCA
IMP: 15-31-524, 15-31-552, 35-1-944, 35-1-1037, 35-6-201, 35-8-912, 35-8-1010, MCA

REASONABLE NECESSITY: Governor Gianforte's Red Tape Relief Initiative charged executive agencies with the goal of simplifying administrative rules through the removal of redundancies to statute and clarification of department procedures and/or requirements.

The department's Business and Income Taxes Division (BIT) analyzed that the department has historically issued tax clearance certificates based on sometimes complex statutory descriptions rather than a taxpayer's self-described need for the certificate, such as a certificate of good standing; for a business entity's dissolution or withdrawal (i.e., winding up); or to revive an administratively dissolved business entity.

In 2022, BIT changed its internal business practice to improve its work with taxpayers to lessen or eliminate confusion about tax clearance certificates, as

described above, and the response has been very positive. The department now proposes to amend ARM 42.2.402 to officially adopt the business practice into rule.

The proposed removal of text in current (1) through (6) reflects unnecessary clutter in the rule which does not lend to any greater understanding of the subject matter by a taxpayer. The department's proposed amendments will require section renumbering, where necessary.

Section (1) amendments propose to give appropriate deference to the listed statutory authorities and clarifies the existence of an application process, available online or via a traditional paper application.

Section (2) amendments propose to clarify the general conditions that apply to persons or entities that apply for tax certificates, in particular when the certificate request is related to statutory reinstatements for limited liability companies and business corporations under Title 35, chapters 8 and 14, MCA, respectively.

The proposed amendments in (3) seek to clarify BIT's practice that allows for the issuance of a tax certificate to a person or entity who has entered into a payment plan or other agreement, such as a settlement agreement, with the department.

Amendments in proposed (4) and (5) are necessary for internal consistency and housekeeping of the rule text for improved clarity.

The department proposes new (6) which informs entities that receive tax certificates that a certificate has an expiration period from the date of issuance. This proposed expiration period is necessary because entities have annual tax reporting requirements, and a tax certificate should not suggeset open-ended compliance.

Finally, the department proposes to amend the implementing citations which is required under 2-4-305, MCA.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than August 26, 2024.

5. Todd Olson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

7. An electronic copy of this notice is available on the department's web site at www.mtrevenue.gov, or through the Secretary of State's web site at rules.mt.gov.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Scott Mendenhall
Scott Mendenhall
Deputy Director of Revenue

Certified to the Secretary of State July 16, 2024.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE MONTANA STATE AUDITOR

In the matter of the adoption of NEW RULE I pertaining to Pharmacy Benefit Manager Maximum Allowable Cost Appeals	))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On April 26, 2024, the Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI) published MAR Notice No. 6-288 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 791 of the 2024 Montana Administrative Register, Issue Number 8.

2. On May 16, 2024, a public hearing was held in-person and electronically to consider the rulemaking. Seven people attended. Two written comments were received on May 24, 2024, by email.

3. CSI adopts NEW RULE I (6.6.7905) as proposed:

4. CSI has thoroughly considered the comments and testimony received. A summary of the comments received and CSI's responses are as follows:

Proponents

At the public hearing, CSI received numerous supportive comments from representatives of Pharmacy Services Administrative Organizations (PSAOs), representatives of Montana pharmacies, and Montana pharmacists themselves. The comments generally highlighted how onerous and time consuming one-by-one appeals have been, that this requirement has deterred pharmacists from submitting appeals, and that pharmacists and PSAOs in other states with similar requirements to the proposed rule have been able to submit appeals in batch format to Pharmacy Benefit Managers (PBMs) without issue.

One PSAO estimated that the process of individually entering Maximum Allowable Cost (MAC) appeals would take about 90 minutes per day of pharmacists' time.

CSI also received one additional written comment in support of the rule from representatives of independent Montana pharmacies.

CSI thanks the proponents for their participation in the rulemaking process.

Opponents

CSI received one written comment from a trade association that contained several points, each of which will be addressed below. This commenter did not attend or speak at the time made available for live public comments.

COMMENT #1: A commenter said that at present, CSI does not have the specific and/or substantive rulemaking authority within statute to promulgate the language of the proposed rule. See Title 33, MCA, generally. Additionally, the state's Maximum Allowable Cost pricing statute says nothing about batch appeals, just that a Pharmacy Services Administrative Organization can appeal.

The commenter went on to request "that the CSI justify its authority to issue the language of the Proposed Rule, beyond a citation to the state statute providing the CSI with general rulemaking authority."

RESPONSE #1: CSI respectfully disagrees with the commenter that its only reference to rulemaking authority was "a citation to the state statute" giving it general rulemaking authority. Section 33-1-313, MCA, provides that the CSI shall have the authority to "make reasonable rules for or as an aid to the effective administration of any provision of the [Montana Insurance Code]."

Indeed, in the original proposal notice published on April 26, 2024, CSI gave a detailed description of the need for this rule:

> In light of the addition of PSAOs to the provisions in 33-22-173, MCA, to allow orderly submission of appeals, and to clarify the requirements of this provision, the commissioner believes this new rule is necessary for, and an aid to, the effective administration of the statutory provision above.

This is far from a bare citation to state statute for authority; it was a detailed explanation of the reasons for the CSI's exercise of rulemaking authority. The proposed rule is an aid to the effective administration of 33-22-173, MCA, because it clarifies the meaning and scope of the law's requirement that a PBM "provide a procedure by which a pharmacy or pharmacy services administrative organization may appeal the price of a drug or drugs on the maximum allowable cost list," and resolves known issues that pharmacies and PSAOs have had with some PBMs refusing to process MAC appeals received in a batch format.

The statute requires that PBMs provide a procedure for pharmacies and PSAOs to appeal the price of a drug **or drugs** on the MAC list. PSAOs by their nature represent multiple pharmacies and thus will have multiple appeals to file. The statute's usage of the plural "drugs" likewise presumes that pharmacies or PSAOs will have the right to appeal pricing of more than one drug at a time. The proposed rule aids the effective administration of this statute and is thus authorized by 33-1-313, MCA.

COMMENT #2: This same commenter also requested that CSI make the following change to proposed NEW RULE I:

> (1) A pharmacy benefit manager's appeals procedure described in 33-22-173, MCA, must allow for the submission of appeals received from a pharmacy or a pharmacy services administrative organization contracted with that pharmacy benefit manager as part of a batch or group of appeals.

The commenter claims that this is necessary because its members' "systems" cannot process batch appeals unless the PBMs have a contract with the entity submitting the batch appeal, be that a pharmacy or PSAO. This assertion is not explained, nor is there any indication as to what it would entail to allow batch appeals from a PSAO representing a contracted pharmacy. The commenter blames the "current configuration of our member companies' systems" without further elaboration.

RESPONSE #2: Without indicating what burden, if any, it would place on PBMs to change the "configuration of [their] systems," CSI does not believe the proposed amendment above is warranted. Requiring a contract between the PBM and the entity *submitting* the appeal would add an unnecessary step to the appeals process and would interfere with the rights of pharmacies or PSAOs to associate with a representative of their choice in interacting with PBMs.

Even if a pharmacy directly contracts with a PBM, this should not be a barrier to its choice to use a representative entity like a PSAO in dealing with PBMs. Nor has the commenter identified any real additional burden of allowing a PSAO to submit an appeal on a pharmacy's behalf. This is especially true where the definition at 33-22-170(8), MCA, already defines a PSAO as "an entity that acts as a contracting agent or provides contracting and other administrative services to pharmacies to assist them in their interactions with third-party payers and pharmacy benefit managers." An agency relationship between a pharmacy and PSAO is already presumed in statute, and under Montana law, an agent may "perform any act that its principal may lawfully perform." *Pennell v. Nationstar Mortg., LLC*, 2022 MT 235, ¶ 13.

COMMENT #3: This commenter also claims that CSI's "interpretation of the word 'drugs' in a plural form as expressed in the underlying statue, allowing the agency to appeal in the context of batch MAC appeals is unsupported and bad public policy. For example, 'batch appeals' generally means each claim needs to be individually verified and supported. Additionally, claims are often submitted for health plan sponsors that are not regulated by the CSI."

The commenter also claims that this process would encourage the filing of "frivolous appeals" that it believes "could number in the thousands," and claims that it could raise costs on Montana insureds as a result. The commenter does not identify how or why this process would encourage "frivolous" appeals or what an appealing party

would gain by submitting frivolous filings. The commenter further worries that pharmacies would file incomplete appeals to which PBMs would be obligated to reply to within ten days under 33-22-173(1)(c), MCA.

RESPONSE #3: First, CSI's interpretation of the plural term "drugs" in the statute is not a question of "public policy" but based on the plain meaning of the statute. Section 33-22-173(1)(a), MCA, requires a PBM to provide procedure by which a pharmacy or PSAO may appeal the price of "a drug **or drugs** on the maximum allowable cost list." The only way a process could allow for the appeal of the price of "drugs" in the plural sense would be to allow submission of more than one appeal at a time. "The legislature does not perform useless acts," and an interpretation that gives effect to each word of the statute is always preferable to one that renders part or all of a statute "mere surplusage." *Am. Linen Supply Co. v. Dep't of Revenue*, 189 Mont. 542, 545, 617 P.2d 131, 133 (1980) (citing 1-3-223, MCA).

Second, nothing in the proposed rule changes the standards for the information that a pharmacy or PSAO must submit with an appeal. It only requires PBMs to allow for the submission of appeals in "a batch or group of appeals." To the extent that the commenter complains that it would have to adjudicate each claim to make sure it is "verified and supported," this would be the case with individually submitted appeals as well. This rule only affects the *means* by which such appeals are received.

Third, to the extent the commenter claims that claims may be submitted for plan sponsors not regulated by CSI, nothing in the rule reduces or enlarges the scope of the PBM statutes or which health insurers or plan sponsors are reached by the law.

Fourth, the commenter claims that this process would encourage frivolous appeals, but it does not identify *why* a pharmacy or PSAO would be motivated to do so, nor can it point to any examples of receiving frivolous appeals in the past. If frivolous appeals were a problem inherent in filing batch appeals, CSI would expect the commenter would be able to share examples from states that have already implemented a similar law or rule. These speculative concerns do not justify declining to adopt the rule. By contrast, the onerous process of entering appeals one-by-one and its effect of discouraging pharmacies from filing appeals has been demonstrated by record testimony and is a problem that supports adopting this rule.

Finally, to the extent the commenter worries that it would be required to respond to incomplete appeals within ten days, CSI would point out that "respond" does not mean "adjudicate" and that PBMs are free to address this in their appeals policy, provided it is otherwise consistent with law and regulation.

COMMENT #4: This commenter also proposed that CSI add the following language to proposed NEW RULE I:

> A pharmacy benefit manager shall not prevent a network pharmacy or the pharmacy's designee who holds a contract with the pharmacy benefit manager from filing appeals in an electronic

batch format. The pharmacy benefit manager shall respond in an electronic format to valid reimbursement appeals filed in an electronic batch format. A batch appeal shall not be considered a valid appeal unless all required information for each claim in the batch is submitted electronically with the correct, contractually required information and in the required format. An appeal shall not be considered valid for purposes of the ten (10) day response timeframe until all information is received.

This was based on the concerns identified in Comment 3 above.

RESPONSE #4: CSI declines the commenter's invitation to get more involved in the process by which PBMs provide an avenue to appeal MAC pricing. As described above, the commenter has not demonstrated an immediate problem in need of correction, but mere speculation with no evidence of a regulatory need. As such, an additional detailed rule regarding completeness, adopted without opportunity for additional public debate and comment, is not warranted. Should the commenter actually experience the negative outcomes it describes in its comment, it may petition for additional rulemaking and provide evidence and argument in favor of the necessity of its proposed rule.

CSI thanks all commenters and attendees who shared public comments. After thoroughly considering the comments received, the rule will be adopted as originally written.

5. The effective date of this rulemaking is September 1, 2024.

/s/ Andrew Cziok
Andrew Cziok
Rule Reviewer

/s/ Mary Belcher
Mary Belcher
Deputy Auditor
Commissioner of Securities and Insurance,
Office of the Montana State Auditor

Certified to the Secretary of State on July 16, 2024.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULE I pertaining to the administration of the Tourism Development and Enhancement Revolving Loan Fund	))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On June 7, 2024, the Department of Commerce published MAR Notice No. 8-99-213 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 1257 of the 2024 Montana Administrative Register, Issue Number 11.

2. No comments or testimony were received.

3. The department has adopted NEW RULE I (8.99.1501) as proposed.

/s/ John Semmens
John Semmens
Rule Reviewer

/s/ Mandy Rambo
Mandy Rambo
Deputy Director
Department of Commerce

Certified to the Secretary of State July 16, 2024.

BEFORE THE MONTANA HISTORICAL SOCIETY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 10.121.501 and 10.121.701 and the repeal of ARM 10.121.502, 10.121.503, 10.121.504, 10.121.702, 10.121.703, 10.121.801, 10.121.803, and 10.121.804 pertaining to collection acquisition and select collection loans	)))))))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On May 24, 2024, the Montana Historical Society published MAR Notice No. 10-121-2401 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1088 of the 2024 Montana Administrative Register, Issue Number 10.

2. The Historical Society has amended and repealed the above-stated rules as proposed.

3. No comments or testimony were received.

/s/ Molly Kruckenberg
Molly Kruckenberg
Rule Reviewer

/s/ Jude Sheppard
Jude Sheppard
Board of Trustees President
Montana Historical Society

Certified to the Secretary of State July 16, 2024.

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 12.2.306 pertaining to department liaisons	)))	NOTICE OF REPEAL

TO: All Concerned Persons

1. On February 23, 2024, the Department of Fish, Wildlife and Parks (FWP) published MAR Notice No. 12-625 pertaining to the public hearing on the proposed repeal of the above-stated rule at page 304 of the 2024 Montana Administrative Register, Issue Number 3.

2. On March 22, 2024, a public hearing was held on the proposed repeal of the above-stated rule, via Zoom. Due to technical problems with Zoom, FWP was unable to receive testimony at the public hearing.

3. On April 2, 2024, FWP published a second notice of public hearing and extension of comment period due to the technical problems with the previous hearing, at page 666 of the 2024 Montana Administrative Register, Issue Number 7.

4. On May 3, 2024, a public hearing was held on the proposed repeal of the above-stated rule, via Zoom. FWP received both written and oral testimony comments by May 6, 2024.

5. FWP has repealed ARM 12.2.306 as proposed.

6. FWP has thoroughly considered the comments and testimony received. A summary of the comments received, and FWP's responses are as follows:

COMMENT 1: One commenter requested that the requirement that FWP liaison with various groups and organizations not be repealed so that there is a direct and required path for FWP to discuss issues with the public and organizations. The commenter suggested that keeping this path "will help maintain transparency of proposals your organization may advance that might otherwise be at risk of special interest groups furthering their agendas."

RESPONSE 1: Section 2-3-103, MCA, enacted in 1975, requires agencies to adopt procedures securing the constitutional right to a reasonable opportunity to participate in the operation of governmental agencies prior to a final agency decision. The liaison administrative rule, first adopted in 1976, set forth how FWP would comply with 2-3-103, MCA. Over time, and as technology has improved, FWP has developed new procedures to comply with Montana's public participation laws.

Approximately four weeks before a scheduled commission or board meeting, FWP posts the agenda along with the any proposals to its public website. The public can

participate in meetings via Zoom or by appearing in person at one of its seven regional offices on the meeting date.

FWP also maintains a mailing list of interested persons who can subscribe to and receive information on FWP news, public notices, public comment opportunities, hunting updates, education, closures, restrictions, and re-openings. Each general interest area has additional specific subtopics that can be selected. Users can adjust their personal notification preferences to receive notices immediately, daily, or weekly via email. Releases are also sent to a wider audience via Gov Delivery. FWP sends out a biweekly news release to interested parties, regional citizen action committees, and media lists, with a digest of current news and issues before the agency.

Organizations and members of the public can and do participate in these processes. Through these public outreach paths, FWP consistently provides transparency in proposals under consideration, and therefore rejects the commenter's suggestion that repealing the rule will decrease agency transparency.

COMMENT 2: One commenter supported the repeal of this rule stating it is archaic and no longer reflects how the commission or the department engages with the public, including citizen organizations, in decision-making processes.

RESPONSE 2: FWP appreciates the support and acknowledgment that this rule no longer reflects how public engagement occurs in the decision-making process.

COMMENT 3: One commenter strongly opposed the repeal of this rule stating: "[i]t may be true that it 'no longer reflects how the Commission or the Department engage with public, including citizen organizations, in decision making processes,' but if so, that is the fault of FWP and not a fault in the requirement. The process laid out in the rule should be how FWP engages with the public and citizen organizations." The commenter noted that Montana's long history of public engagement with state decision-making processes is how it should be. The commenter shared that this repeal is one more step to turning Montana into a playground for the privileged and powerful, where only they get to decide how the state's public resources should be managed.

RESPONSE 3: FWP appreciates the commenter's concern. However, modern technological capabilities have enabled FWP to improve its public engagement far beyond what the rule requires. Another example is reflected in the volume and accessibility of work groups and committees that contain a cross section of stakeholders and citizen membership. For these reasons, and those found in other responses in this notice, FWP rejects the commenter's suggestion that repealing the rule will exclude any public perspective or opinion.

COMMENT 4: One commenter was adamantly opposed to removing requirements to consider input and work with the public, stating: "having some bureaucrat[s]

dictate policy, rules, regulations based on their own personal opinion without public involvement is wrong."

RESPONSE 4: The repeal of this rule does not remove the requirement that the department consider input from the public. The comment period for proposals offers ample opportunity to provide either written or oral comments for the department's consideration in the decision-making processes. Public comments received at a meeting are incorporated into the official minutes of the meeting.

COMMENT 5: One commenter was concerned about the public's visibility into policy actions taken by FWP, stating that the ability to comment is an essential component of fair legislation, use of tax dollars, and equitable access. The commenter asked FWP to retain public access to information that affects everyone.

RESPONSE 5: The majority of FWP actions, except those categorically excluded under administrative rule or ministerial in nature, incorporate public participation. This is reflected in commission, board, and advisory group processes; Montana Environmental Policy Act documentation (environmental assessments, programmatic environmental assessments, and environmental impact statements); and other public participation opportunities provided across the state. Repealing this rule does not change that.

COMMENT 6: One commenter felt it was a bad idea to remove sportsmen's advocates in the management of sportsmen's dollars because they need an advocate to ensure that government is working in sportsmen's best interest with their dollars. The commenter added that advocates/liaisons are the best method to present the public's opinion.

RESPONSE 6: FWP incorporates stakeholder opinions and advocacy through FWP-established work groups and committees. FWP takes those considerations into the construction of species-specific wildlife management plans and some management proposals. Any advocate, whether a sportsperson or a non-consumptive user of public lands, is provided the same opportunity to participate in FWP decisions.

COMMENT 7: One commenter felt that a larger discussion is merited and rather than repealing the rule suggested the following changes to the language:

(1) In addition to all other requirements, the department and commission shall continue to maintain liaison with citizen, conservation and resource organizations active in areas concerning department responsibilities. This liaison will be on both formal and informal bases through attendance of and participation in their meetings ~~and through membership of department personnel in these organizations. Such organizations include but are not limited to: Montana Wildlife Federation, Montana Wilderness Association, Audubon Society, Ducks Unlimited, Trout Unlimited, Sierra Club, Environmental Information Center, Northern Rockies Action Group, various state and local outfitter and guide organizations, local unaffiliated rod and gun clubs~~,

or any other citizen, conservation or resource organization expressing an interest in wildlife, ~~and~~ outdoor recreation and the sustainable management of public wild resources of the state of Montana.

RESPONSE 7: FWP appreciates the submission of the suggested change in writing. However, FWP declines to adopt the proposed revisions for the reasons stated in the responses to all the comments received.

COMMENT 8: A comment from an association opposed the repeal of this long-standing administrative rule because it believes the repeal undermines FWP's and the commission's credibility as it minimizes public involvement in important decision-making processes. The commenter stated that they did not trust FWP leadership because of the lack of involvement of division and field staff in developing proposals.

RESPONSE 8: The repeal does not reflect a shift in approach of FWP's commitment to public engagement. The repeal was proposed for the purpose of aligning administrative rules with FWP's current long-standing public engagement and participation practices and procedures.

COMMENT 9: One commenter was concerned that revocation of the policy in place since 1976 to ensure transparency in FWP matters and the opportunity for citizens to be heard and the chance for FWP to respond will be lost.

RESPONSE 9: FWP's current practice for engaging the public and interest groups is reflected through commission processes, work groups, and other informal meetings. The rule does not reflect the current, nor the recent past structure for public engagement under multiple administrations. FWP will continue to meet with individuals and groups, and seek input, when and if relevant issues arise.

COMMENT 10: One commenter disagreed that the rule was archaic, sharing that meeting with department personnel and commission members is not "archaic," rather a necessary function of FWP to disseminate information, gather public input, and foster support for department and commission decisions. In addition, the commenter stated department and commission public meetings replaced by online or Zoom meetings are frequently marred by technical difficulties making an interchange with a person difficult and do not allow for people to exchange views and form relationships. The commenter stated that if FWP or the commission is unwilling to meet for some reason, the public can call on ARM 12.2.306 to ask for a meeting.

RESPONSE 10: The guarantee for public notice and participation is found in Montana's constitution, not administrative rule. FWP's current practice for engaging with the public on various topics has been discussed in the responses in this notice, and the examples provided are not a complete list of every opportunity.

The use of electronic communications has become an integral part of how FWP is able to provide opportunity to participate in agency decisions simultaneously with

citizens and organizations from across the state. FWP and the commission engage in discussions in real time, and in a fully transparent manner to citizens on all sides of an issue which is not reflected in the provisions of the liaison rule. Therefore, FWP is proceeding with the repeal of ARM 12.2.306.

/s/ Kevin Rechkoff
Kevin Rechkoff
Rule Reviewer

/s/ Dustin Temple
Dustin Temple
Director
Fish, Wildlife and Parks

Certified to the Secretary of State July 16, 2024.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.50.213 pertaining to reimbursement payments for abandoned vehicle removal	))))	NOTICE OF AMENDMENT (MOTOR VEHICLE RECYCLING AND DISPOSAL)

TO: All Concerned Persons

1. On March 22, 2024, the Department of Environmental Quality published MAR Notice No. 17-441 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 504 of the 2024 Montana Administrative Register, Issue Number 6.

2. The department has amended the above-stated rule as proposed.

3. No comments or testimony were received.

/s/ *Sarah Christopherson*
SARAH CHRISTOPHERSON
Rule Reviewer

/s/ *Sonja No*wakowski
SONJA NOWAKOWSKI
Director
Department of Environmental Quality

Certified to the Secretary of State July 16, 2024.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.20.1304, 17.20.1505, 17.20.1604, 17.20.1606, and 17.20.1607 and the repeal of ARM 17.20.818, 17.20.907, 17.20.920, 17.20.921, 17.20.922, 17.20.923, 17.20.924, 17.20.928, and 17.20.929 pertaining to the Need Findings in the Montana Facility Siting Act (MFSA)	))))))))))	NOTICE OF AMENDMENT AND REPEAL (MAJOR FACILITY SITING ACT)

TO: All Concerned Persons

1. On April 26, 2024, the Department of Environmental Quality published MAR Notice No. 17-443 pertaining to the proposed amendment and repeal of the above-stated rules at page 818 of the 2024 Montana Administrative Register, Issue Number 8.

2. The department has amended and repealed the above-stated rules as proposed.

3. No comments or testimony were received.

/s/ Nicholas Whitaker
NICHOLAS WHITAKER
Rule Reviewer

/s/ Sonja Nowakowski
SONJA NOWAKOWSKI
Director
Department of Environmental Quality

Certified to the Secretary of State July 16, 2024.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 18.6.301, 18.6.420, 18.7.204, 18.7.227, and 18.7.231 pertaining to Railroad Crossing Signalization, Tourist-Oriented Directional Signs, and Right-of-Way Occupancy by Utilities	)	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On June 7, 2024, the Department of Transportation (department) published MAR Notice No. 18-198 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1288 of the 2024 Montana Administrative Register, Issue Number 11.

2. The department has amended the above-stated rules as proposed.

3. No comments or testimony were received.

/s/ Valerie A. Balukas
Valerie A. Balukas
Rule Reviewer

/s/ Christopher Dorrington
Christopher Dorrington
Director
Department of Transportation

Certified to the Secretary of State July 16, 2024.

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULES I through VI pertaining to preparole screening	)))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On May 24, 2024, the Department of Corrections published MAR Notice No. 20-7-73 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 1109 of the 2024 Montana Administrative Register, Issue Number 10.

2. The department has adopted the following rules as proposed: NEW RULES I (20.7.1401), II (20.7.1402), III (20.7.1403), IV (20.7.1404), V (20.7.1405), and VI (20.7.1406).

3. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT #1: A commenter stated that these rules would be a great tool for inmates to start getting reintroduced to society. The commenter also stated that offenders who are turned down by the Montana Board of Pardons and Parole should be eligible for the preparole screening under the proposed rules.

RESPONSE #1: The department appreciates the supportive comment. At this time, the Montana Legislature has limited preparole screening to inmates who are not yet eligible for parole. As a result, these rules cannot be extended to inmates who are already eligible for parole and have been previously turned down by the Board of Pardons and Parole.

/s/ Andres Haladay
Andres Haladay
Rule Reviewer

/s/ Brian Gootkin
Brian Gootkin
Director
Department of Corrections

Certified to the Secretary of State July 16, 2024.

BEFORE THE BOARD OF PHYSICAL THERAPY EXAMINERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.177.401, 24.177.501, and 24.177.2105, the adoption of NEW RULES I and II, and the repeal of ARM 24.177.503 and 24.177.507 pertaining to the board of physical therapy examiners	)))))))	NOTICE OF AMENDMENT, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On June 7, 2024, the Board of Physical Therapy Examiners (agency) published MAR Notice No. 24-177-37 regarding the public hearing on the proposed changes to the above-stated rules, at page 1335 of the 2024 Montana Administrative Register, Issue No. 11.

2. On July 2, 2024, a public hearing was held on the proposed changes to the above-stated rules via the videoconference and telephonic platform. Comments were received by the deadline.

3. The agency has thoroughly considered the comments received. A summary of the comments and the agency responses are as follows:

COMMENT 1: Several commenters were in favor of NEW RULE I, regarding physical examinations for the Federal Motor Carrier Safety Administration.

RESPONSE 1: The board appreciates all comments received during the rulemaking process.

COMMENT 2: Several commenters supported the board's rulemaking proposal.

RESPONSE 2: The board appreciates all comments received during the rulemaking process.

COMMENT 3: One commenter opposed reducing the continuing education hours, stating the board did not appropriately identify the rationale for reducing the number of hours.

RESPONSE 3: The board is reducing the number of hours after discussion that continuing education is not a guarantee of continuing competency of a licensee, and that eight hours per year is the minimum requirement expected of licensees.

4. The agency has amended ARM 24.177.401, 24.177.501, and 24.177.2105 as proposed.

5. The agency has adopted NEW RULES I (24.177.414) and II (24.177.502) as proposed.

6. The agency has repealed ARM 24.177.503 and 24.177.507 as proposed.

BOARD OF PHYSICAL THERAPY EXAMINERS, BRIDGET MENNIE, PT, CHAIR

/s/ JENNIFER STALLKAMP
Jennifer Stallkamp
Rule Reviewer

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 16, 2024.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.41.101, 37.41.102, 37.41.107, 37.41.108, 37.41.109, 37.41.110, 37.41.116, 37.41.117, 37.41.119, 37.41.120, 37.41.121, 37.41.122, 37.41.130, 37.41.131, 37.41.132, 37.41.202, 37.41.206, 37.41.301, 37.41.302, 37.41.306, 37.41.308, and 37.41.315 and the repeal of ARM 37.41.118, 37.41.133, and 37.41.207 pertaining to aging services	))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On May 24, 2024, the Department of Public Health and Human Services published MAR Notice No. 37-1053 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1113 of the 2024 Montana Administrative Register, Issue Number 10.

2. The department has amended and repealed the above-stated rules as proposed.

3. No comments or testimony were received.

/s/ Robert Lishman
Robert Lishman
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State July 16, 2024.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.114.101, 37.114.203, and 37.114.204 pertaining to communicable disease control	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On May 10, 2024, the Department of Public Health and Human Services published MAR Notice No. 37-1066 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1038 of the 2024 Montana Administrative Register, Issue Number 9.

2. The department has amended the above-stated rules as proposed.

3. No comments or testimony were received.

/s/ Robert Lishman
Robert Lishman
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State July 16, 2024.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.81.304 pertaining to the Big Sky RX program	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On May 10, 2024, the Department of Public Health and Human Services published MAR Notice No. 37-1069 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1048 of the 2024 Montana Administrative Register, Issue Number 9.

2. The department has amended the above-stated rule as proposed.

3. The rule amendment is to be applied retroactively to January 1, 2024.

4. No comments or testimony were received.

/s/ Brenda K. Elias
Brenda K. Elias
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State July 16, 2024.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.40.830 pertaining to hospice reimbursement	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On May 10, 2024, the Department of Public Health and Human Services published MAR Notice No. 37-1070 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1051 of the 2024 Montana Administrative Register, Issue Number 9.

2. The department has amended the above-stated rule as proposed.

3. The increase in hospice reimbursement rates will be applied retroactively to October 1, 2023. Any decreases in hospice rates will not be applied retroactively and will be effective the day after publication of this adoption notice.

4. No comments or testimony were received.

/s/ Robert Lishman
Robert Lishman
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State July 16, 2024.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 44.5.303 pertaining to the Business Services annual report filing fee waiver in 2025	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On June 7, 2024, the Secretary of State published MAR Notice No. 44-2-276 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1384 of the 2024 Montana Administrative Register, Issue Number 11.

2. On June 28, 2024, a public hearing was held on the proposed amendment of the above-stated rule.

3. The Secretary of State did not receive any comments or testimony.

4. The Secretary of State has amended the above-stated rule as proposed.

/s/ AUSTIN MARKUS JAMES
Austin Markus James
Rule Reviewer

/s/ CHRISTI JACOBSEN
Christi Jacobsen
Secretary of State

Dated this 16th day of July, 2024.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEES

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee

- Department of Agriculture
- Department of Commerce
- Department of Labor and Industry
- Department of Livestock
- Office of the State Auditor (Commissioner of Securities and Insurance)
- Office of Economic Development
- Division of Banking and Financial Institutions
- Alcoholic Beverage Control Division
- Cannabis Control Division

Education Interim Committee

- State Board of Education
- Board of Public Education
- Board of Regents of Higher Education
- Office of Public Instruction
- Montana Historical Society
- Montana State Library

Children, Families, Health, and Human Services Interim Committee

- Department of Public Health and Human Services

Law and Justice Interim Committee

- Department of Corrections
- Department of Justice

Energy and Telecommunications Interim Committee

- Department of Public Service Regulation

Revenue Interim Committee

- Department of Revenue
- Montana Tax Appeal Board

State Administration and Veterans' Affairs Interim Committee

- Department of Administration
- Montana Public Employee Retirement Administration
- Board of Investments
- Department of Military Affairs
- Office of the Secretary of State
- Office of the Commissioner of Political Practices

Transportation Interim Committee

- Department of Transportation
- Motor Vehicle Division (Department of Justice)

Environmental Quality Council

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- Department of Natural Resources and Conservation

Water Policy Interim Committee (where the primary concern is the quality or quantity of water)

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- Department of Natural Resources and Conservation

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2024. This table includes notices in which those rules adopted during the period January 26 through July 5, 2024, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2024, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, notice numbers in ascending order, the subject matter of the notice, and the page number(s) at which the notice is published in the 2024 Montana Administrative Register.

To aid the user, this table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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2-12-646	Local Government Public Meeting Recordings, p. 781, 1574
2-59-642	Definitions - Out-of-State State-Chartered Bank or National Bank Seeking to Exercise Fiduciary Powers in Montana - Out-of-State Nonbank Trust Companies Seeking to Exercise Fiduciary Powers in Montana - Fiduciary Foreign Trust Companies, p. 490, 1058

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2-43-648 Basic Period of Service - Receipt of Service Credit on or After Termination of Employment - Calculation of Highest Average Compensation or Final Average Compensation, p. 787, 1577
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6-286 Quality Assurance for Managed Care Plans, p. 162, 714
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8-101-212 Submission and Review of Applications for Funding Under the Coal Board, p. 499, 1059
8-111-208 Housing Credit Program, p. 102, 463
8-119-206 Administration of the Big Sky Film Grant Program, p. 1772, 250
8-119-207 Administration of the Pilot Community Tourism Grant Program, p. 1775, 251

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8-97-102 Conservation Reserve Payment Enhancement Program, p. 1, 328

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10-54-292 Early Literacy Targeted Intervention Programs, p. 1656, 721
10-56-286 Assessment Standards, p. 662
10-57-289 Educator Licensure Standards, p. 175, 1189
10-63-270 Early Childhood Education Standards, p. 185, 722

(Montana Historical Society)
10-121-2401 Collection Acquisition and Select Collection Loans, p. 1088

(Montana State Library)
10-102-2302 Updating Rules to Comply With Recent Legislation, p. 198, 605
10-102-2303 State Aid to Public Libraries, p. 984, 1578

(Office of Public Instruction)
10-7-124 School Finance, p. 1501
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(Board of Chiropractors)
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EXECUTIVE BRANCH APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of executive branch appointees and upcoming vacancies on those boards and councils.

In this issue, appointments effective in June 2024 appear. Potential vacancies from August 1, 2024 through August 31, 2024, are also listed.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of July 1, 2024.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

EXECUTIVE BRANCH APPOINTEES FOR JUNE 2024

Appointee	Appointed By	Succeeds	Appointment/End Date
Board of Outfitters			
Mr. Chris Gentry	Governor	Reappointed	6/17/2024
Ennis			6/30/2027
Qualifications (if required): Business owner reliant on outdoor recreation			
Mr. Wagner Harmon	Governor	Reappointed	6/17/2024
Bainville			6/30/2027
Qualifications (if required): Outfitter representing a private land hunting outfit			
Geospatial Information Advisory Council			
Joseph Kauffman	Governor	Stahly	6/17/2024
Sidney			7/1/2026
Qualifications (if required): Montana Association of Registered Land Surveyors Representative			
Montana Wheat and Barley Committee			
Mr. Terry Angvick	Governor	Reappointed	6/17/2024
Plentywood			6/1/2027
Qualifications (if required): Famer Deriving Income from District 1			
Ms. Courtney Herzog	Governor	Conover	6/17/2024
Rapelje			6/1/2027
Qualifications (if required): Farmer Deriving Income from District VI			

EXECUTIVE BRANCH APPOINTEES FOR JUNE 2024

Appointee	Appointed By	Succeeds	Appointment/End Date
Montana Wheat and Barley Committee Cont.			
Ms. Cynthia McKamey	Governor	Bumgarner	6/17/2024
Cascade			6/1/2027
Qualifications (if required): Farmer Deriving Income from District V			
State Library Commission			
Mr. Thomas Burnett	Governor	Reappointed	6/1/2024
Bozeman			6/1/2027
Qualifications (if required): Public Member			
Ms. Robyn Scribner	Governor	Reappointed	6/1/2024
Geraldine			6/1/2027
Qualifications (if required): Public Member			

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EXECUTIVE BRANCH VACANCIES – AUGUST 1, 2024 THROUGH AUGUST 31, 2024

Board/Current Position Holder	Appointed By	Term End
Board of Private Security		
Ms. Heidi Visocan, Plentywood	Governor	8/1/2024
Qualifications (if required): Co. Sheriff's Office Representative		
Mr. Gabe Zeiler, Sidney	Governor	8/1/2024
Qualifications (if required): City Police Department Representative		
Board of Veteran Affairs		
Mr. Denny Lenoir, Helena	Governor	8/1/2024
Qualifications (if required): Representative of U.S. Senator Steve Daines, non-voting member		
Mr. Anson Nygaard, Helena	Governor	8/1/2024
Qualifications (if required): U.S. Senator Jon Tester Representative, non-voting member		
Mr. Kurt Nelson, Scobey	Governor	8/1/2024
Qualifications (if required): Region 5 Veteran		
Board of Veterinary Medicine		
Dr. Paul William McCann, Havre	Governor	8/1/2024
Qualifications (if required): Licensed veterinarian		

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